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THE PRESENT POSITION OF REPRESENTATIVE DEMOCRACY

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I

The problem of representative democracy has been altered in a final way by the events of the post-war years. It is improbable that any one will again defend its superiority over alternative forms of government in the terms which would have satisfied either Jefferson or Jeremy Bentham. It is obvious that any view which places confidence in the power of universal suffrage and representative institutions, unaided and of themselves, to secure a permanently well-ordered commonwealth is seriously under-estimating the complexity of the issue. Such a view not only gravely exaggerates the power of reason over interest in society; it also misconceives the dynamic nature of the purpose which representative democracy is seeking to secure.

Looking back now, at a generation's distance, upon the success of representative democracy in the nineteenth century, it is plain that this was due to the coincidence of quite special conditions. The vast expansion of material well-being which scientific discovery effected made possible the concession of an improved standard of life to the working-classes without any negative effect upon the standard enjoyed by their masters. The main character of the purposes it was sought to realize by governmental action was largely negative also. Privilege was overthrown in the realms in which it was established by law upon the assumption that liberty of contract was the inevitable parent of social equality. The establishment of things like popular

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education, a wide franchise, religious toleration, and the like, conferred upon the masses a profound sense of satisfying emancipation without involving any of the tragic consequences which the opponents of those changes had predicted. The relatively narrow sphere of governmental regulation, moreover, made the issues of policy largely non-technical in character; and it was possible for political discussion to be followed by the multitude in a way which made representative institutions themselves effective organs of popular instruction. Nor had the ideal of national independence yet assumed a form in which its economic expression seriously hampered the relations between states; the development of capitalism had not yet come to imply such an intensity of international interdependence as made the national state a dubious unit of sovereign authority. Emigration to America was unrestricted; and all over the world there were great areas of capital investment in which the taking of risk without coördinated plan still seemed to offer a high and assured return. The Far East still accepted domination by Europe and America without sign of serious revolt; and the opening up of Africa offered the prospect of a wealth unhampered by the limiting demands of social regulation. Anyone who observes the history, say of Great Britain between 1815 and 1914, can hardly help concluding that the prestige of Victorian parliamentarism was the outcome of quite special economic circumstances of which there seems no reason to expect a repetition.

Anyone who compares the complacent optimism of fifty years ago with the institutional *malaise* of our own time cannot fail to be impressed by the contrast. The Marxian socialists apart, it was well-nigh universally admitted that the road was clear to the triumph of representative democracy at least in Western civilization and, as it was thought, all over the world, as the process of education completed its task. Things like freedom of speech, judicial impartiality, freedom of migration, were highly prized; the statesman seemed the master of the forces it was his business to dominate. Taxation was low; and the legend was still accepted that liberty of contract had established equality of opportunity. There was little left of that pessimistic denunciation which, in the 'forties, was the keynote not only of Marx and Engels, but of men so different as Carlyle and

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the young Tories to whom the *Sybil* of Disraeli seemed a prophetic utterance. Socialism was still rather a conspiracy than a movement. The trade unions had nowhere won a position of primary significance in the state. The men who really counted in the making of public opinion seemed to differ only on the incidentals of social philosophy. If there were national rivalries, there seemed no reason to doubt that the main lines of institutional development had been laid down in a final way.

No one has that confidence now. What alone can be said to remain of the Victorian political ideals are the final eclipse of aristocracy and the recognition that no church can dominate the life of a nation. The advocates of *laissez-faire* have been driven to admit that liberty of contract has no meaning in the absence of equality of bargaining power. The national state has become, as a sovereign entity, completely incompatible with the existence of a highly intricate and inter-dependent world-community. The price of social peace has become a volume of costly social administration which overwhelms national legislatures and has transferred effective political power to the executive of which parliament has become little more than the organ of registration. The subject-matter of legislation has become so highly technical that much of its meaning is unintelligible to the multitude; and its extent is so great that there is rarely time for its essential principles to be illuminated by public discussion. The East is in revolt against tutelage. The breakdown of currency, and the ideal of economic self-sufficiency in the national state, has everywhere ended freedom of trade and migration. Taxation is everywhere so high that every new social experiment necessarily alters the way of life of the little minority who, in every state, control the basic sources of economic power. In many countries, the ideal of representative democracy has been frankly abandoned; and that feeling for liberty which was characteristic of the Victorian period is everywhere at a discount. Socialism in Western Europe has, almost universally, become the essential opposition to the bourgeois parties; and its emergence to that rank is significant, above all, because its conception of society is antithetic to the ideal that it challenges. If European trade unions have not achieved the scale and power which seemed possible in 1919, their growing

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immersion in politics is a vital expression of changed conditions. And it is urgent to realize how completely the foreign policy of the nation-state has become a way of expressing the major capitalist interests by which each political community is controlled. Oil, coal, steel, high finance, are empires which utilize political mechanisms for the expression of the single purpose of profit that they embody; and because their operations are world-wide, no state remains outside the orbit of their influence. International relations have become a function of the habits of economic imperialism. If war superficially represents nation-states in collision, behind the legendary symbols it is a struggle between competing groups of capitalists for access to economic power.

Representative democracy seems to have ended in a *cul-de-sac*. And few of the remedies for its difficulties that were put forward by the thinkers of the nineteenth century seem in the least degree adequate to its cure. That the best men do not enter political life, that it is dangerous to enfranchise the uneducated, that our methods of voting are illogical or absurd, that we need more experts, or better information, that parties subordinate the national to functional interests, that there is too much government, or too little—none of these explanations even begins to scratch the surface of the problem. Who are the best men? What is an educated person? Who can say that the strict logic of Germany's voting system makes the results of her governance more adequate than those of Great Britain? Who can tell, by any objective criteria, when a party is hostile to the interests of the whole community? Is there a single vital theme of government policy—the tariff, disarmament, currency, wage-standards—upon which the experts speak with a united voice? Better information we all may proclaim as desirable. But in the presence of interests so profoundly conflicting as those which divide the modern state, who is to interpret the information in a way so disinterested as to command widespread assent for the policy in which it is to issue? Men speak of institutional reorganization. But it is useless to reorganize institutions unless the community is agreed upon the purposes for which they are intended. The demand either for more or for less government is meaningless unless it can specify also the kind of society it

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is proposed to build. All schemes of greater or lesser social regulation must be built upon a clear view of public policy; and that is largely absent from the affirmations of either side.

II

To anyone who, like myself, accepts the ideal of a democratic society as preferable to any alternative, the essential fact which emerges from the present situation is that the conditions are not present in which such a society can function. I mean by a democratic society one in which the incidence of policy is not biassed in the direction of any particular group in the community—in which, therefore, the interest of any individual in the operation of the state is approximately equal to that of any other. I believe, with Tocqueville, that the evolution of society represents a perpetual struggle for the establishment of this equality; and, therefore, that the source of the *malaise* we are witnessing is the inability of the principle of equality to find expression in a framework of institutions which deny it the possibility of effective entrance. I propose to illustrate this position by analyzing the situation of democratic institutions in Great Britain—mainly because I am most familiar with them —and to draw therefrom some general inferences.

The British position is inherently simple. Great Britain became the leading industrial nation in the world during the nineteenth century by being the first people to profit by the results of the revolution in manufacturing technique. Until the 'eighties of the last century, her predominance was unchallenged; and her business men were able to afford all the concessions demanded from them by organized labor without losing their power to underbid their competitors in the world-market. But that position grew steadily weaker as rivals emerged, as protective tariffs made it increasingly difficult to enter new, and retain old, markets. Universal suffrage demanded an ever-growing volume of social legislation as the price to be paid for the favors of the electorate. The post-war period merely clarified a situation the outlines of which could be decisively seen under the Liberal government of 1906-14. It was that, with a heavy burden of debt and a shrinking market for its exports, the standard of life attained before the war could be maintained for the

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community as a whole only if the owners of property were prepared to surrender their privileged position and agree that their income should be increasingly taxed to offer amenities to those without property which the latter could not afford from their wages alone.

The decline of Liberalism and the rise of the Labor party have been due to the fact that those who dominated the Liberal party were themselves the owners of property who found themselves threatened by the demands made by Labor on the state. The increasing tendency of Liberals to join the forces of Conservatism arose from the realization that both alike were threatened by the rise of a socialist party; and that, if the latter had its way, the vested interests of a capitalist society would be attacked at the root. Liberals were prepared to disagree with Conservatives upon matters of incidental significance so long as both were agreed upon the fundamental character of the society—that fundamental character being the private ownership of the means of production upon the basis of profit-making by the entrepreneur. As soon as socialism became the alternative government in the state, Liberals joined with their historic rivals to protect this system of private ownership from an attack made upon it in the name of equality.

This alteration in the disposition of party forces is likely to have important results on the constitutional position. The success of the British parliamentary system has been built upon the fact that the major parties in the state could agree to accept each other's legislation, since neither altered the essential outlines of that social-economic system in which the interests of both were involved. With the emergence of the Labor party as the alternative government, a different position has come into view. The Labor party aims at the transformation of a capitalist into a socialist society. It seeks, therefore, directly to attack, by means of Parliament, the ownership of the means of production by those classes which constitute the foundation of Tory and Liberal strength. Its principles are a direct contradiction of those of its rivals. It denies the validity of the whole social order which the nineteenth century maintained. Is it likely that it can attain its objectives in the peaceful and constitutional fashion which was characteristic of the Victorian epoch?

No one not a Communist is likely to prophesy on these mat-

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ters with any certitude. He will note, indeed, that so comparatively small a change as that involved in home rule for Ireland brought Great Britain, in 1914, to the verge of civil war. He will be influenced in his judgment by the fact that the transference of power from king to Parliament in the seventeenth century involved a civil war and a revolution before it was complete. He will remember that the dispossession of a governing class has rarely been effected without violence. A change in the essential methods of production, such as the Labor party envisages, involves changes in the legal and political institutions which are literally fundamental. However generous be the compensation to established expectations, the interference with vested interests which the policy predicates is momentous in amount. Are the owners of property likely to accept the peaceful destruction of their position in the state?

Nor is that all. Even if it takes a considerable period for the Labor party to secure power, the position in which the Conservative forces find themselves is not an easy one. The last thirty years have brought into being the social service state; and the cost of its maintenance is high. The burden of war-debt, the shrinkage of the export-trades, the growth of the demand for self-government by India—all intensify the weight of that burden. If Conservatism is to maintain the predominance of those who control its policies, it must be at the cost of the standard of life built up by the working-class in the last generation. To economize on things like the social services is to risk a Labor victory; not to economize on them is to jeopardize the power of British capitalists to produce at a cost which enables them to penetrate foreign markets. Alternative sources of economy—armaments, for example, are likely to be small over a considerable period simply because the disturbed state of Europe and the Far East does not offer that feeling of security out of which disarmament can come. The drama of a currency crisis, as in 1931, may steel the nation to temporary sacrifice; but that merely postpones the discussion of equality and does not abandon it. Sooner or later, Great Britain has to face the issue of whether it will adjust its economic and social constitution to the political democracy upon which its legislative constitution depends.

The observer who seeks to analyze the prospects of this posi-

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tion must realize that, on any showing, thoroughgoing institutional adjustment is unavoidable. The position of the House of Lords is incompatible with the aims of the Labor party. The procedure of the House of Commons is utterly unsuited to the necessities of the positive state. The reconstruction of the areas and functions of local government is an urgent matter if efficient decentralization is to be possible; and, without efficient decentralization, no reform of Parliament would leave it adequate to its tasks. The whole machinery and principles of the common law, moreover, are conceived in terms of principles which deny the very essence of an equal society; their reformation is inescapable if its realization is to have meaning. No one, in a word, can visualize what is involved in the transformation of the existing institutional structure without realizing how gigantic is the task involved in its reconstruction.

Nor must we omit the international aspect of the matter. Not only is Great Britain involved in a world-economic system by the standards of which she must set her own. She is involved also in a world-political system the rivalries of which at every point affect the character of her policy. A German revolution, a Franco-Italian war, an attack on Russia by Japan, an Indian revolt, may alter altogether the position in which she finds herself. And her economic adjustments are peculiarly costly by reason of the deep-seated social habits they disturb. *Laissez-faire,* in the Victorian sense, is dead. Modern forms of regulation involve problems for her which go to the very root of that curious combination of political democracy and aristo-plutocratic social control to which she has so far entrusted her destiny. All her essential habits—toleration, absence of deliberate plan, leisureliness of adjustment—are threatened by the rapid changes in economic technique which the scientific revolution in modern industry is compelling.

The very nature of those rapid changes, moreover, gives decreased significance to historic representative institutions; it leads one to inquire whether political democracy has not, so to say, arrived too late upon the scene to control the total process by which it is confronted. For the leisurely processes of parliamentary debate are far too slow for the requirements of economic decision. They tend merely to register agreements ar-

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rived at outside the legislative assembly. Parliament could not have controlled the bankers in 1931; the movement of finance had determined the course of events before ever it could be summoned to grapple with its implications. No one supposes that Parliament, either, could charge itself with the control of the detailed processes of industry; at the most, it must confine itself to the largest general issues. And this raises the question of whether, if the movement toward an equal society on socialist principles gains momentum, the public which is now represented in the House of Commons is not going, from the very nature of its problems, to find itself dissolved into a series of special publics much more loosely integrated by the political process than is the case under the price-mechanism of a capitalist society.

Or, it may be, the evolution may not be in the direction of an equal society. In that case, the disproportion between the political democracy and the economic oligarchy will be even more striking than now. For only the advent of some sudden and unexpected economic prosperity will enable that oligarchy to satisfy the wants of the political democracy. The characteristic of capitalism tempered by spasmodic regulation, especially in a protectionist society, is everywhere the same. It means special privilege in terms of the power at the disposal of the different groups. It means, where foreign investment is concerned, the use of the state by the investing class, where it is significant enough in wealth or size or skill in propaganda, for the usual purposes of imperialism. The courts and the legislature are utilized to protect what privilege obtains from the vantage-ground of its inequality from the assault of the unprivileged. The implication of such a society is necessarily conflict.

From all this, I conclude that the success of the British parliamentary system was due to the privileged economic position gained by Great Britain in the course of the Industrial Revolution, and that it is rapidly becoming dubious as that privileged position disappears. It is, no doubt, true that the tenacity of British constitutionalism will give it a better chance of survival than is the case in countries where the tradition is less deeply rooted—in France, for instance, or Germany, or Italy. But that success, as I have argued, was the outcome of the facts (1) that

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the concessions demanded were mainly negative in character, (2) that they could be made without serious cost to those who conceded them, and (3) when the mass of the population were not being organized into parties divided by final differences of economic outlook.

None of this is true today. The position of privilege is gone, and there is no reason to expect its return. The concessions demanded fundamentally alter the position of the class which dominates the economic system; they can make them only at the price of their eventual disappearance. Increasingly, again, the division between parties is determined by a vital difference of view upon matters of economic constitution; they have moved to the fundamental debate upon the rights of property in the community. We have been warned on high authority that under such circumstances the classical traditions of British politics are likely, in the very nature of things, to be jeopardized.[1]

III

This analysis of the British position may reasonably be extended into a wider generalization. For a state to realize the common good, it is necessary that it should be built upon the conditions which make possible the emergence of that common good. Where the claims of its members upon the results of the social process are seriously unequal, conflict can be postponed only so long as those whose claims receive less satisfaction have the constant sense that the differences which exist are clearly referable to the needs of that common good itself. Once that sense ceases to be widely present, there is absent from the society that agreement about fundamental principles which makes possible the effective working of representative government.

All over the world, in the nineteenth century, political democracy succeeded because it associated the abolition of privilege with increasing economic welfare for the masses of the population among Western nations. It was widely believed that as the masses became, through representative institutions, the masters in their own house, the operations of the state would increasingly represent the general advantage. Men did not re-

[1] Bagehot, *The English Constitution* (World's Classics edition), preface by Lord Balfour, p. xxii f.

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alize how special were the conditions of this success. They depended upon the increasing economic returns of America and the imperialistic exploitation of the colored peoples. Once the saturation point had been reached in America, and the East became unwilling to submit to white domination, the conditions were changed. It became clear that to improve the condition of the masses meant an attack on economic privileges, and a consequent reorganization of the economic order. But the terms upon which political privilege had been abandoned were that the way of life of those who owned the effective sources of economic power should not be altered. The new movement—which the war of 1914 rather threw into striking relief than started—challenged precisely those terms. Representative democracy became unstable because there was no longer agreement between the governing classes and the mass of the people, either upon the ends it should seek or upon the ways in which it should seek them.

The position in which we find ourselves was startlingly seen by Tocqueville in a passage to which too little attention has been paid. "The people," he wrote,[2] "had first endeavored to help itself by changing each political institution, but after each change, it found that its lot was in no way improved, or was only improving with a slowness quite incompatible with the eagerness of its desire. Inevitably, it must sooner or later discover that that which held it fixed in its position was not the constitution of the government, but the unalterable laws that constitute society itself; and it was natural that it should be brought to ask itself if it had not both the power and the right to alter those laws, as it had altered all the rest."

That is the question put squarely to modern civilization by socialism, and, of course, with peculiar and dramatic intensity by the Russian experiment. The *malaise* of representative democracy is due to the fact that the governing classes are not willing to alter the essential characteristics of capitalist society to their disadvantage. That unwillingness can be maintained only upon the basis of a capacity to secure economic improvement at a rate which satisfies the demands of the workers. Such a capacity is unattainable under modern conditions. For it de-

[2] *Recollections* (Eng. trans.), p. 99.

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pends upon the ability of a capitalist society to work its assumptions without constant interference from non-economic ends. A society able to make its adjustments in terms of a purely objective price-mechanism might ignore considerations, especially ethical, of a subjective kind. There is no such practicability in Western civilization. State-policy meets demands of a non-economic kind to which it is continually bound to pay deference. Politicians dare not offend a powerful group of manufacturers; they are driven by public opinion to regulate prices, or wages, or the hours of labor; they must seek to protect society from the dangers of monopoly. Whatever be the causes, the free play of the market will no longer control the results with which we are confronted. The abandonment of *laissez-faire* means the necessity of social control.

But with the admission of that necessity, there is no escape from the problem of economic equality. So long as there are differences in the return to effort, and privileges in the attainment of those differences, men are bound to inquire into the causes of the difference and the justification of the privilege. They are bound to ask why social control should be so exercised as to benefit only a few; and there is certain to be increasing insistence that it should be exercised in the interest of the many. Such an exercise, of course, means a transvaluation of values; it involves the response to wants in other terms than effective economic demand. Representative democracy, at this stage, is, briefly put, asked to solve the problem by paralleling the political equality it achieved with a similar economic equality. To do so constitutionally, it has to call upon the holders of economic power voluntarily to abdicate from their position of dominance. So far-reaching a demand is not welcome; and, no doubt, to most of those to whom it is made, it seems like an attempt to overthrow the natural foundations of social order. The forces of prescription are on their side, and it is psychologically intelligible that they should be prepared to fight rather than give way.

In any society, in fact, the state belongs to the holders of economic power; and its institutions naturally operate, at least in the main, to their advantage. But by establishing political democracy they offer to the masses the potentiality of capturing

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the political machinery and using it to redress the inequalities to which the economic régime gives rise. Where that position arises, they are asked to coöperate in the abolition of the advantages they enjoy. Such coöperation has rarely been offered deliberately or with good-will; and it has been necessary, as a rule, to establish by force a new legal order the institutions of which permit the necessary adjustments to be made.

It appears likely that we are approaching such a position at the present time. It is significant that the rivalry of competing economic nationalisms appears to make impossible the attainment of that political security which is the condition of any economic equilibrium. The absence of political security, especially in the aftermath of recent war, makes necessary a volume of expenditure upon debts and armaments which hinders the prospect of material improvement. For it reduces trade; it lessens the essential capital accumulation; and it involves such a scale of taxation that social services are threatened at their foundation because of the cost to the governing class of their maintenance or development. The reduction of trade, moreover, means unemployment; and the world is confronted by the spectacle of a vast army of workless men who, sharing in political power, are inevitably tempted to use it for their protection against want. In such a condition, the differences between men become final in character; the prospect of solving them in terms of reason instead of terms of power becomes a matter of extraordinary difficulty. But the thesis of representative democracy is precisely the willingness to accept the verdict of that reason which is able to win a victory at the polls. It may be that, aware of the dangers which now attend the application of violence to the solution of social problems, our generation will act differently from its predecessors. It is as yet difficult to scan the horizon of politics and discern there hope that this will be the case.

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THE JAPANESE EMPEROR*

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Ever since 1889, when the Emperor Meiji granted his people a constitution, Japan may be called a constitutional monarchy. But these simple words do not tell the whole story. The designation used by the *Almanach de Gotha* in referring to Czarist Russia—a "constitutional autocracy"—may be as appropriately applied to modern Japan. Japan has a constitution and a monarch, but in the eyes of both the people and the statesmen of the Restoration Period, the monarch comes before the constitution.

I. THE HEAVEN-DESCENDED EMPEROR

The unique place that the Emperor enjoys in the Japanese system depends partly upon the history of the institution of the Throne and partly upon the deliberate attempt of the statesmen of the Restoration to develop an overlordship within the state which would prevent the economic and political forces of the Empire from destroying themselves in internal conflict. Like the American constitution of 1787, the fundamental law of 1889 was not a sharp break with the past. It is true that in 1885 Prince Ito received a commission from the Emperor to draft the written constitution establishing the representative government which he had promised his people. It is true that Ito and his colleagues traveled over the world, studying governments preliminary to drafting a constitution for Japan. Nevertheless, whatever Ito took from European institutions, and particularly from the English constitution and from Bismarck's famous constitution of 1867 for the German Empire, he blended with the historical position of the Japanese Emperor and the imperial legend which the statesmen of the period of the Restoration had already developed. Thus the Japanese Emperor possesses much of the authority and all of the parliamentary trappings of the Bismarckian institution, while retaining the indigenous qualities of the Japanese dynasty.

The "heaven-descended" dynasty of Japan has not always been in the best repute. During certain periods of Japanese his-

* A concluding instalment of this article will appear in the October issue. Translations of Japanese sources were made by Dr. Sterling Tatsuji Takeuchi.

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tory, the Throne suffered the deepest humiliation. While Japanese theory as far back as Prince Shotoku in A.D. 604 rejected the Chinese doctrine that sanctions popular rebellion against an unworthy monarch, Japanese emperors, in spite of their alleged sanctity, have suffered the same vicissitudes as have rulers in other lands. For more than a thousand years under the Fujiwara domination and under the shogunate founded by Yoritomo, the emperors were mere *fainéant* kings, residing in seclusion in Kyoto, while the real rulers—the shoguns—governed the country in their name from Kamakura, and later from Tokyo. Even the pretense at legitimacy was frequently flaunted. In 1221, the brilliant scion of the heavenly line, Go-Toba, when he attempted to end the dual rule, was defeated in battle and relegated to a monastery. A hundred years later, the ninety-sixth emperor, Go-Daigo, was hounded from his capital. Under the Ashikaga shoguns, the emperors were often reduced to poverty. When the 103rd emperor, Go-Tsuchi-Mikado, died in 1500, the corpse lay forty days in a darkened chamber for lack of funds for the funeral. The coronation of his successor was postponed twenty years for similar reasons—Hosokawa Masamoto, the shogun-maker, having sardonically assumed that the country could be governed without the coronation of a sovereign. One emperor was reduced to copying verses from the classics to secure money for food and shelter; another lived in a hut with a thatch roof that barely kept out the rain.[1]

The pages of history have buried this ignominious record of imperial prostration. Moreover, the absolute retirement of the Emperor and the personal rule of the shogun practiced by the Tokugawa house (1603-1867) fostered the tradition that the Emperor was a divine being, the guardian of his people, but removed from all contact with mundane affairs. It appears that the group of statesmen who brought about the overthrow of the Tokugawa shogunate and the so-called restoration of the Emperor in 1867 deliberately played up this characterization of the Emperor, expanding the tradition of reverential loyalty and worship of the

[1] Compare James Murdock, *History of Japan* (Yokohama, 1903-10), Vol. I, pp. 429-448, 536-563, 585-588, 633-634, and Vol. II, p. 17; Frank Brinkley, *History of the Japanese People* (London, 1912), pp. 344, 378-400, 440-441, 460-461.

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Throne, particularly as found in the well-known creed of Moto-ori, the eighteenth-century expounder of Shintoism.[2]

In Germany, Hegel developed a theory of the state which permitted the Hohenzollern régime to maintain a sixteenth-century form of monarchy even in the twentieth century. In Japan, the elder statesmen of the Restoration outdistanced all Hegelian concepts. The framers of the constitution appear to have envisaged not only the identification of the Emperor with the state, but also his deification. The preamble to the constitution acknowledges the tradition of the origin of the imperial dynasty with the sun-goddess, Amaterasu-o-mikami, or the Great Goddess of the Celestial Light, whose primitive adventures are chronicled in the *Kojiki* and the *Nihongi*.[3] Article I of the constitution provides that the empire of Japan shall be "reigned over and governed by a line of emperors unbroken for ages eternal." Article III declares that the Emperor is "sacred and inviolable."

If there is any doubt about the constitution's recognition of the divinity of the Emperor, Ito resolved all obscurity in his *Commentaries*. And what interpretation can be more authentic than the *Commentaries,* since they came contemporaneously from the pen of the man who drafted the constitution itself? Quoting the *Kojiki,* or Records of Ancient Matters, Ito declared: "The Sacred Throne was established at the time when the heaven and the earth became separate." And he went on to say: "The Emperor is Heaven-descended, divine, and sacred. He is preëminent above all

[2] The combination of emperor-worship and the theory of national superiority advanced by Moto-ori is illustrated by the following passage from his celebrated *Nohibi no Mitama:* "Japan is the country which gave birth to the goddess of the sun, Amaterasu-o-mikami, which fact proves its superiority over all other countries which enjoy her favors. The goddess, having endowed her grandson Ninigi-no-Mikoto with the three sacred treasures, proclaimed him sovereign of Japan for ever and ever. His descendants shall continue to rule it as long as the heavens and earth endure. Being invested with this complete authority, all the gods under heaven and all mankind submitted to him, with the exception of a few wretches who were quickly subdued." Professor B. H. Chamberlain is the principal advocate of the theory that statesmen of the Restoration deliberately fostered emperor-worship as a means of uniting the country. See his "The Invention of a New Religion," *Japan Weekly Chronicle* (Kobe), January 1, 1912, pp. 24-26.

[3] Compare B. H. Chamberlain's translation of the *Kojiki* in the *Transactions of the Asiatic Society of Japan* (Tokyo, 1920), Vol. X, supplement, and W. G. Ashton's translation of the *Nihongi; Chronicles of Japan from the Earliest Times to A.D. 697* (London, 1924).

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His subjects. He must be reverenced and is inviolable.'"[4] Again, Ito tells us that "the Sacred Throne of Japan is inherited from Imperial Ancestors and is to be bequeathed to posterity; in it resides the power to reign over and govern the state." He specifically states that the provisions regarding the sovereign power contained in the constitution in no way imply any new opinions set forth in the constitution; on the contrary, the original national policy was to remain unchanged and to be only the more surely confirmed.

Customs of the people are stronger than constitutions and political theories. There is eloquent testimony regarding the popular belief in the divinity of the Emperor. As Professor McGovern has pointed out, the teaching of the fairy tales regarding the divine origin of the Emperor in the school books, the veneration with which the Emperor's picture is regarded in the schools, the refusal to print the Emperor's face on the postage stamps which are handled by vulgar fingers (just as Christian nations preserve from indignity images of Jesus Christ), the precautions that no one shall look upon the Emperor from an elevated position—these are indications of the hold of the imperial tradition upon the imagination of the people.[5] More than this, the Shinto religion is based on the legends of the *Kojiki* and the divinity of the "heaven-descended" dynasty. Thus the Emperor is an essential feature of what may be called the state religion of modern Japan.

[4] Count Hirobumi Ito, *Commentaries on the Constitution of the Empire of Japan* (translated by Miyoji Ito, Tokyo, 1889), p. 6. See also p. 2. The third edition of the original *Commentaries*, including also translations of amendments to the Law of the Houses and to the Imperial House Law, was published in 1931 by the Chu-o Daigaku, or Central University, in Tokyo.

[5] Compare William M. McGovern, *Modern Japan* (London, 1920), pp. 122-141. Dr. McGovern gives quotations from the official textbooks of the primary schools issued by the Department of Education which instill into the mind of the Japanese youth the idea of the divine origin of the Emperor. For quotations from other school texts, see *Japan Weekly Chronicle*, January 4, 1912, pp. 5-6. Attention may be called also to the oft-quoted address of Baron Oura, minister of agriculture and commerce in the second Katsura ministry, made in February, 1911, in which he said: "That the majesty of our Imperial House towers high above everything to be found in the world, and that it is as durable as heaven and earth, is too well known to need dwelling on here. . . . If it is considered that our country needs a religious faith, then, I say, let it be converted to a belief in the religion of patriotism and loyalty, the religion of Imperialism —in other words, to Emperor-worship." Quoted by B. H. Chamberlain in *Japan Weekly Chronicle* (Kobe), January 4, 1912, p. 25.

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In the words of Professor Nobushige Hozumi, for many years professor of family law in the Imperial University of Tokyo: "The worship of the imperial ancestors is the national worship." Professor Hozumi also asserts: "I can speak from personal knowledge, that the principal care of Prince Ito in preparing the draft of the constitution by the command of his Sovereign was to reconcile and bring into harmony the traditional character of the government, based on the cult of the Imperial Ancestor, with the most advanced principles of modern constitutionalism.[6]

Loyalty to the Emperor is characteristic of Japanese national psychology. This is well depicted in a little work on *Constitutional Loyalty* by Yukio Ozaki, a liberal member of the House of Representatives since its first session in 1890.[7] The author attempts to prove that the imperial house has always promoted the best interests of the Japanese people, and that if the people were seduced from their loyalty by a Takaji or a Ieyasu, the result was the flouting not only of the Emperor, but also of the state, until eventually the recurring loyalty of the people brought back both the state and the Emperor. Says Ozaki:

> While the reigning dynasties in foreign lands have been subject to constant change, even the most ancient lasting only a few centuries, and others having an ephemeral existence of a few years, Japan has seen but one ruling house from the very foundation of the state by the Emperor Jimmu five and twenty centuries ago to the present time. This fact alone reflects the incomparable glory of our Imperial House. The happiness and prosperity of our people under its benign influence may also be regarded as unparalleled in the history of the world. The causes of this unrivalled state of affairs are doubtless numerous; but they may be divided into two classes, namely: (1) mystic or divine; and (2) human. . . . The main object of the people should be both by day and by night to endeavor jealously to foster and maintain a perpetual and perfect accord between the will of the Sovereign and the sentiments of the people, and thereby accentuate those human causes which contribute to guarantee the glory and prosperity of the Imperial House. This is the very essence of loyalty and patriotism.[8]

[6] *Ancestor-Worship and Japanese* Law (3rd ed., Tokyo, 1913), pp. 47, 93.

[7] *Rikken Kinno,* or Constitutional Loyalty (Tokyo, 1917). The English translation by J. E. de Becker is entitled *The Voice of Japanese Democracy; Being an Essay on Constitutional Loyalty* (Yokohama, 1918).

[8] *Constitutional Loyalty,* pp. 1-4. Ozaki also says on p. 72: "The royal house invariably guiding or acting upon public opinion, the wishes of the sovereign and the sentiments of the people are always united, with the result that there is not merely no fear of the ruler and ruled being alienated, but no opportunity is afforded for the designs of unscrupulous ministers. In this country the union of sovereign and subjects has been

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Probably the most extravagant expression of devotion to the imperial dynasty comes from the pen of Professor Uyesugi, of the law faculty of the Imperial University of Tokyo, who, in referring to the famous Imperial Rescript on Education, promulgated by Emperor Meiji on October 30, 1889, said:

> The Imperial Rescript on Education . . . is the foundation and principle of the moral activity of the Japanese. Why? Because it is an imperial rescript. The dignity of the imperial rescript is attributable to nothing but the fact that it is an imperial rescript. There can be no reason or argument whatever about it. . . . The Emperor is the vital center of the Japanese nation. His is the personality upon whom all Japanese depend. This is the essence of our nationality and the foundation of our morality. In this manner did the Imperial Ancestors establish the nation, and through this idea has the country passed from one Imperial rule to another, and will pass for ever. Our nationality is centered in one person, and it is our duty to develop and fulfill our destiny by observing our duty to the Throne, ultimately attaining the highest pinnacle of morality. We profess our faith, neither doubting nor fearing, and enjoy in it that perfect peace of mind which is the sum of happiness. Sacrificing ourselves, both in mind and body, with joy for the imperial idea, we promote it and obey it. This is the backbone of Japanese morality and the foundation of the national spirit.
>
> Thus the Imperial Rescript is above all criticism. The standard of justice and injustice, of right and wrong, is to be fixed by the imperial will. . . . The Imperial Rescript embodies truth, righteousness, wisdom, and all the virtues. All religions defer and yield pride of place to it. Philosophy holds good only when it is in conformity with the imperial will. If the Emperor should say, "Go to the left," we should go to the left. If he should say, "Go to the right," we should go to the right. That is the way and doctrine of the Japanese. We have but to obey, without doubt or demur; and we should do so, not because the saints and sages of old so taught us, not because the learned have shown us that it is reasonable so to do, but because it is an imperial rescript. It is an imperial rescript —it claims our obedience.[9]

This extreme view, granting the commands of the Emperor a higher authority than the constitution or other religious beliefs, or even reason itself, found an answer from a distinguished jurist, Kokei Ichimura, who declared: "If the imperial rescripts have supreme power only because they are imperial rescripts . . . both

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sought by moral and mental means." Compare also the following statement on p. 36: "When the Taira, the Minamoto, the Hojo, the Ashikaga, and the Tokugawa families were in the ascendancy, the condition of the Imperial House was far from satisfactory. . . . Always it is by flattery that the monarch and the state are overwhelmed."

[9] Shinkichi Uyesugi, "Emperor Worship in Japan." English translation in *Japan Weekly Chronicle*, June 26, 1913, p. 1172.

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the constitution and the laws will lose their prestige. It will come to mean, 'The king's will is law,' as Ulpian said. That may have been the rule in Rome or in mediæval times, but it is not to be recommended in modern constitutional countries.... It is dangerous to attribute omnipotence to imperial rescripts.''[10]

The deification of the monarch is no longer found in any European state. But the practice is not alien to Japanese philosophy, and certainly obtains at the present time under Ito's constitution. There is evidence that well-educated citizens do not hold the beliefs taught in the textbooks of the public schools. The professors of constitutional law in the Imperial University of Tokyo no longer emphasize the divine origin of the Emperor. Nevertheless, in political life the old reverence for the Throne still prevails. In 1929, the minister of education was severely reprimanded in the House of Peers for his failure to make an obeisance to the Throne on his entrance and withdrawal from the house, on the ground that ''neglect on the part of the head of the national administration of education would have a pernicious effect on public morals.''[11] In the same year, the ratification of the Kellogg Peace Pact was held up for ten months because of criticism in both the Diet and the Privy Council on the ground that the words that the pact had been concluded by the various sovereigns ''in the names of their respective peoples'' constituted an insult to the Japanese Emperor.[12] Not infrequently, Professor Minobe and the new school of jurists are branded on the floors of the Diet as destroying loyalty to the Throne.[13]

II. THE QUESTION OF SOVEREIGNTY

Any discussion of the Emperor's place in the constitutional system of Japan must sooner or later touch upon the question of the location of sovereignty. And this brings us to the controversy of 1912 between Uyesugi and Minobe, between the young and ardent defender of the old school and the cool-headed founder of a

[10] English translation in *Japan Weekly Chronicle*, July, 1913, p. 63.

[11] *Dai Shijurokkai Teikokugikai Shugiin Yosan Iinkai Giji Sokkiroku*, or Fifty-Sixth Diet: House of Peers Budget Committee Proceedings, pt. 1, no. iv, p. 21. Cf. *Japan Weekly Chronicle* (Kobe), February 28, 1929, p. 244.

[12] Compare, in particular, the speech of Yukio Ozaki. *Kwampo gogai*, or Official Gazette extra, March 26, 1929, pp. 1026-1039.

[13] Compare speech of Nakamura during the debate on the Kellogg Peace Pact, *Kwampo gogai*, March 26, 1929, House of Representatives, p. 1039.

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new juristic school—a controversy that marks a new era in Japanese political thought. Both of these jurists at the time were professors on the law faculty of the Imperial University of Tokyo. The dispute grew out of an academic paper from the pen of Minobe questioning the theory which identifies the state with the person of the Emperor. The origin and basis of this theory should engage our attention before we proceed to analyze the position of the new school.

Article IV of the constitution reads: "The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present constitution." Commenting on this article, the drafter of the constitution declared that "the combination of all the governmental powers of the state in one person is the essential characteristic of sovereignty." He admitted the separation of powers into the legislative and executive groups, but held that "unless the governmental powers of state all center in the head, which is the seat of the will of the state, it will be impossible to maintain the organic life of the state."[14] Another classic expression of this theory is found in the writings of Dr. Yatsuka Hozumi, professor of constitutional law at the Imperial University of Tokyo from 1891 to 1912, and dean of the law faculty from 1898 to 1912. In the words of Professor Hozumi:

> The characteristic of the Japanese monarchical state is that the natural will of a definite individual completely constitutes the legal will of the state. The will of the Emperor is the will of the state. The monarchy and the state are identical; in other words, the Emperor is the state.[15]

Prince Ito and the founders of the old school accepted the view of the German monarchists with reference to sovereignty. Their commentaries frequently quote von Schulze, von Rönne, and Laband. Said von Schulze: "The king of Prussia possesses personally the whole and undivided power of the state in all its plenitude."[16] According to von Rönne:

[14] Count Hirobumi Ito, *Commentaries*, pp. 7-8.

[15] *Kempo Teiyo*, or Principles of the Constitution (Tokyo, 1910), Vol. I, p. 3.

[16] Hermann von Schulze-Gävernitz, *Das preussische Staatsrecht* (2nd ed., Leipzig, 1888-90), Vol. I, p. 158. Von Schulze also says on page 205: "The monarch is not the servant of the state. Nor is he the chief official, as is the president of a republic . . . but he is the possessor of the power of the state in his own independent right. The king does not stand outside the state, nor above the state, but he is a member and indeed the supreme member of that political organism."

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As in constitutional monarchies everywhere, so in the Prussian state, the right of the supreme direction of the state belongs exclusively to the king as its supreme head, and no act of government may be performed without him or against his will. All the prerogatives of the state are united in his person; and his will is supreme, the officials being only organs through which he acts. The constitution, it is true, does not expressly set forth these principles, but they have been already legally formulated in the Prussian law and are, moreover, a necessary consequence resulting from monarchy.[17]

Japanese jurists also adopted the German attitude toward public law, which did not assign to a written constitution any superiority over ordinary law. In the words of Laband:

There is no will in the state superior to that of the sovereign, and it is from this source that the constitution draws its binding force to the same extent that the laws draw their authority. The constitution is no mystical power hovering over the state, but like every other law is an act of its will and changeable in accordance with the will. . . . The doctrine that ordinary laws ought always to be in harmony with the constitution, and never incompatible with it, is merely a postulate of legislative policy. It is not a legal axiom. Even if it appears desirable that the existing system of public and private law established by statute shall not be in contradiction with the text of the constitution, the existence of such a contradiction is possible in fact and admissible in law just as any divergency in the penal, commercial, or civil code with a subsequent special law is possible.[18]

In accepting the Hohenzollern idea of sovereignty, Professor Hozumi points out that the foundation of the Japanese state is eternal. It is not the result of the researches of political scientists. "We have not come to have the Imperial Diet, after investigation and examination as to the best kind of government; but, while our progenitors have worshipped their ancestors as a result of historical origin, the people of Japan have worshipped the

[17] Ludwig Moritz von Rönne, *Das Staatsrecht der preussischen Monarchie* (5th ed., Leipzig, 1899-1906), Vol. I, p. 204. Von Rönne also says on page 203: "The monarch is the bearer of the will of the state, and derives his powers from no other organ of the state. In a kingdom, the whole power of the state is fundamentally united. The popular representative body (*der Landtag*), which limits the monarch in the exercise of his functions, possesses only those rights which the constitution expressly grants it. The powers of this body are derived from the constitution. This document is the gift of the king, who up until the promulgation of the constitution was the sole lawgiver in Prussia. In the powers of the king are to be found the source of the powers of the representatives of the people. This does not, however, mean that the king is at any time empowered to take away the constitution. Rather, this is the reason that those powers are constitutionally safeguarded."

[18] Paul Laband, *Das Staatsrecht des deutschen Reiches* (5th ed., Tübingen, 1901), Vol. II, pp. 34-35.

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Imperial Throne and obeyed its power.''[19] Hozumi goes on to contend that the constitution of Japan, even before it was placed on paper by Prince Ito, was based on the principle that all powers of the state are the prerogative of the Emperor. While Ito gave the constitution a European dress, he was careful to say that in no way would he alter the fundamental doctrine of the Japanese state, namely, that sovereignty is to be found only in the Imperial Throne. The restrictions on governmental powers placed in the constitution rest only upon the two houses of the Diet, the cabinet, and the privy council. None of them can ignore the other, and all of them are subordinate to the Emperor. Finally, it should be remarked that Hozumi and his school have not evaded a logical conclusion of their theory. They admit that the parliamentary system of the British type is impossible under the Japanese constitution. According to Hozumi, the Emperor exercises all legislative power; the Diet only advises and consents. Unlike the British crown, the Throne is not under the control of the Diet. Party government is not compatible with the constitution of 1889.

This theory of sovereignty—the traditional *l'état, c'est moi* attributed to Louis XIV—was practically unchallenged in Japan until Minobe raised the issue in 1912. Minobe took his stand on the principle of the non-identification of the Emperor with the state. The Emperor is, he says, an organ of the state, like the Diet or cabinet or privy council.[20] The Emperor has no power to violate the constitution, while at the same time citizens have no right of revolution. ''Sovereignty is vested in the state and not in the Emperor; although it is possible that the Emperor exercises sovereignty under the constitution.'' Again he asserts:

I believe that to regard the *kokka tochi-ken,* or sovereignty of the state, or the right of governing the state, as the personal right of the Emperor is contrary to the fundamental nature of the Japanese state (*kokutai*) and contrary to the spirit of the Japanese constitution. If the rights of

[19] Yatsuka Hozumi, ''Different Theories Concerning the Fundamental Character of the State,'' in Uyesugi and Minobe, *Saikin Kempo Ron* (7th ed., 1927), p. 83.

[20] In 1912, Professor Uyesugi published his *Teikoku Kempo Kogi,* or Lectures on the Imperial Constitution, which reflected the traditional view upon the location of sovereignty as expressed in the quotations from Hozumi which we have given. Minobe, in a review of Uyesugi's book, contradicted this view. Uyesugi replied; Minobe made a counter-reply; and several exchanges followed. These various papers, together with articles by Yatsuka Hozumi, Kokei Ichimura, Wamin Ukida, Mitsu Inouye, and Yorozu Oda, have been republished under the title *Saikin Kempo Ron,* or Recent Developments in Constitutional Law (Tokyo, 1927).

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sovereignty (*tochi-ken*), as Dr. Uyesugi states, are the personal rights of the Emperor alone, *tochi-ken* exists only for the purpose of the Emperor himself, and the annual expenditure and income of the state are the annual expenditure and income of the Emperor. I believe such a view is contrary to the intent of the constitution and repugnant to the tradition of our country. The fact that the constitution expressly distinguishes the national treasury and the expenses of the Imperial House, the fact that affairs of the state and affairs of the Imperial House are separated, and the fact that the officials of the state and the officials of the Imperial House are distinct—all these facts are proof for my contention. The right of sovereignty does not belong to the Emperor alone, but is a right that exists for the welfare and interests of the entire state.[21]

Minobe's theory, viewing the Emperor as an organ of the state under the constitution, drew the bitter attack of his young colleague, Shinkichi Uyesugi, who thereupon carried the argument for the identification of the Emperor and the state to the most extreme position yet taken in Japanese political philosophy. According to Uyesugi, Japanese polity is characterized by the following concepts: (1) the Emperor is a perfect, divine, and complete sovereign; (2) government is a public act of the Emperor; (3) the Emperor is identified completely with the state; (4) the Emperor and his subjects are one; there can be no conflict between the interests and purposes of these two; and (5) the Japanese Throne is eternal and permanent.[22] In other words, the Japanese state is an ideal polity. Since the Emperor established the constitution in his own right and still holds the rights of sovereignty, there cannot be an act of the Emperor which is contrary to the constitution. Thus a correct interpretation of Japanese history as well as the constitution itself proves the impossibility of treating the Emperor as an organ of the state.[23]

Minobe, in reply, makes an appeal to history. The events connected with the drafting of the constitution, he says, show that its framers not only drew upon Japanese tradition but also copied provisions contained in European constitutions. Particularly was this true with reference to certain aspects of the representative system, ministerial responsibility, the relation of laws and ordi-

[21] *Saikin Kempo Ron* (1927), pp. 60-61.

[22] See his "A Different Theory Concerning the Fundamental Character of the State" and his "Fundamental Character of the State and the Operation of the Constitution," in the *Saikin Kempo Ron* (1927), pp. 13-39, 244-294; and his *Kempo Jutsugi*, or Commentaries on the Constitution (Tokyo, 1927), pp. 97-98.

[23] Compare Judge Cho Shimizu, *Kempo Hen*, or Principles of Constitutional Law (21st ed., Tokyo, 1923), pt. iv. pp. 557-570.

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nances, and the judiciary. Importations from European constitutions influenced every one of them. And consequently any attempt to interpret them must embrace both the European and Japanese standpoints.[24] It is a matter of comparative study. Accordingly, the Japanese scholar should consult the jurists of the entire world. Where, then, do political scientists say that sovereignty is located? Minobe finds that sovereignty is generally considered as vested in the state, although the exercise of sovereignty may be in the hands of the head of the state or in some group or in the people. In an unlimited monarchy, sovereignty may be divided between the monarch and the people. In a democracy, of course, it is exercised by the people alone. Japan is clearly a limited monarchy, and consequently, sovereignty does not repose in the Emperor alone.

The controversy between the old and new schools has so far had little effect upon the relations of the Emperor to the component organs of the Japanese government, in spite of the fact that frequent attacks are made upon Professor Minobe and his followers in the press, in political meetings, and on the floor of the two houses of the Diet. At the same time, there is little evidence that political thought in Japan has made any advance in the direction of a liberalism which admits of the right of rebellion or revolution. The controversy, however, has a practical aspect. For the new school, while maintaining the position that there is no power under the constitution to compel the Emperor to conform to law, nevertheless advocates a liberal development of the constitution by means of precedents and appeals to the Emperor, seeking in this way to promote the establishment of parliamentary government, the increase of the powers of the Diet, and the freeing of the cabinet from all control of the military clans and the obstruction of the privy council.

III. LEGISLATIVE POWERS OF THE EMPEROR

The constitution, as we have already seen, makes a distinction between legislative and executive powers. The old school of jurists holds that legislative powers are exercised by the Emperor through the organs of the state, while the new school contends that

[24] "Some Constitutional Problems in Recent Politics," in Uyesugi and Minobe, *Saikin Kempo Ron* (Tokyo, 1927), pp. 208-209.

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the exercise of such powers is distributed between the Emperor and the legislature. Which one of these opposing theories is to prevail? So far as the wording of the constitution can determine the question, neither school has the best of the argument. Article V provides: "The Emperor exercises the legislative power with the consent of the Imperial Diet." On the other hand, the *Commentaries* of Prince Ito place the legislative power in the hands of the Emperor. The words of the constitution-maker are: "The legislative power belongs to the sovereign power of the Emperor; but this power shall always be exercised with the consent of the Diet. The Emperor will cause the cabinet to make drafts of laws, or the Diet may initiate projects of laws; and after the concurrence of both houses of the Diet has been obtained thereto, the Emperor will give them His sanction, and then such drafts or projects shall become law. Thus the Emperor is not only the center of the executive, but also the source and fountain-head of the legislative power."[25]

Drawing its arguments largely from Prince Ito, the traditional school of jurists has held that the Imperial Diet is but a constitutional organ at the disposal of the Emperor for the governing of the state. According to Hozumi: "The Imperial Diet was established for the purpose of obtaining an expression of public opinion, and in that sense it may be called a representative assembly. But citizens cannot dispose of the nation's business. Under the constitutional law of Japan, the Diet is not an organ expressing the will of the citizens. The purpose of the Diet is merely to allow the administrators to obtain indirectly the opinion of the electorate. There is no relation of trustee and agent between the Diet and the voters; it cannot exercise rights of the citizens."[26]

In other words, according to the old school, the Emperor is the motivating will and idea of all legislation. But, as actually defined in the constitution, the legislative powers of the Emperor are con-

[25] *Commentaries*, p. 9.

[26] *Kempo Teiyo* (1910), Vol. II, p. 417. Again, on p. 436, Hozumi says: "The giving of advice and consent on the part of the Diet does not mean that the legislature makes law. It has the right to discuss the project of law, but not to enact it. The enactment of law belongs solely to the Emperor." Says Uyesugi: "The Emperor alone legislates. All the Diet does is to recommend its opinion for his convenience. The Diet has no share with the Emperor in the legislative power." *Kempo Jutsugi* (Tokyo, 1927), pp. 464-465, 514.

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fined to three groups, namely: (1) the convening of the Diet, (2) the initiation and sanction of law, and (3) the issuance of ordinances. According to Article VII: "The Emperor convokes the Imperial Diet, opens, closes and prorogues it, and dissolves the House of Representatives." These powers, of course, correspond to the usual competence of the throne in any constitutional monarchy. In Japan, as frequently in other constitutional systems, the monarch is bound by a provision to the effect that the Imperial Diet shall be convoked every year (Art. XLI). As Prince Ito explained in his *Commentaries,* the purpose of this article was "to guarantee by the constitution the existence of the Diet."[27] But even here, there is a recognition of extended imperial powers, for Article LXX provides that "when the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the government may take all necessary financial measures, by means of an imperial ordinance." The constitution thus expressly stipulates that the Emperor in times of emergency may fail to convoke the Diet in its annual session. In the forty years since the constitution was promulgated, this eventuality has not yet occurred. It must be noted, too, that under Article XLII of the constitution, sessions of the Imperial Diet are limited to three months a year; although the constitution provides that "in case of necessity, the duration of a session may be prolonged by imperial order," while under Article XLIII, the Diet may be convoked in extraordinary sessions.

The initiation of projects of law, as stipulated in the Japanese constitution, is similar to European parliamentary practice. Under Article XXXVIII, the government may draft projects, which are introduced in the Diet as bills. As explained by Prince Ito, the houses are competent to pass such measures with or without amendment, or to reject them.[28] Thus the cabinet, acting in the name of the Emperor, may initiate legislation in the same way as any member of the Diet. Since such measures are considered as government bills, they have more prestige than a private member's bill. The power of initiation gives the Emperor enormous legislative authority, but, of course, no more extensive in this

[27] *Commentaries,* p. 73.
[28] *Ibid.,* p. 70.

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respect than that of constitutional monarchies under genuine parliamentary systems.

The Emperor also has the authority to sanction laws. In the words of Article VI, "the Emperor gives sanction to laws, and orders them to be promulgated and executed." As Prince Ito has explained, this sanction completes the process of legislation.[29] Does it, on the other hand, constitute a veto power? Most certainly it does, for Ito declares that the Emperor possesses the power to refuse his sanction. Thus, like most constitutional monarchies, the Imperial Throne has power to disallow legislation. It is generally held that the veto power does not extend to the authority to amend an act of the Diet before sanctioning it or to strike out any of the items of an appropriation bill.[30]

The ordinance power of the Emperor is very extensive. Article VIII provides: "The Emperor, in consequence of an urgent necessity to maintain public safety or to avert public calamities, issues, when the Imperial Diet is not sitting, imperial ordinances in the place of law. Such imperial ordinances are to be laid before the Imperial Diet at its next session, and when the Diet does not approve the said ordinances, the government shall declare them to be invalid for the future." And Article LXX provides: "When the Imperial Diet cannot be convoked, owing to the external or internal condition of the country, in case of urgent need for the maintenance of public safety, the government may take all necessary financial measures, by means of an imperial ordinance. In the case mentioned in the preceding clause, the matter shall be submitted to the Imperial Diet at its next session, and its approbation shall be obtained thereto."

In commenting on the ordinance power, Prince Ito admitted that of all the provisions of the constitution, those of Article VIII presented the greatest number of doubtful points. Seven of these questions he resolved by his own fiat, which, in view of the fact that he drafted the constitution, has all the earmarks of authoritative interpretation.[31] These dicta are as follows: (1) An imperial ordinance takes the place of law and in consequence is competent to effect any matter which may be accomplished by law. (2) If the

[29] *Commentaries,* pp. 10-12.

[30] Tatsukichi Minobe, *Kempo Teiyo,* or Principles of Constitutional Law (Tokyo, 1927), p. 402; Shinkichi Uyesugi, *Kempo Jutsugi* (1927), p. 514.

[31] *Commentaries,* pp. 15-17.

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Diet, at a later time, gives its approval to an ordinance, it continues to possess the authority of law without the necessity of promulgation. (3) If the Diet refuses its approval, the government is obliged to issue a proclamation, declaring the ordinance to have no effect, for it is only by such proclamations that the people are freed from the obligation of obedience to it. (4) The Diet may refuse its approval when it has discovered that the ordinance is incompatible with the constitution, or that it is lacking in any of the conditions mentioned in Article VIII, or on the ground of some other legislative consideration. (5) The government must submit all ordinances to the Diet at its next session, or else bear the responsibility of a breach of the constitution; but as to how this responsibility is to be enforced, Ito is silent. Evidently this matter will rest in the hands of the Emperor. (6) An ordinance which has been repudiated by the Diet shall be considered to have had effect up to the time of its repudiation. (7) The Diet has no power to amend an imperial ordinance before stamping it with its approval.

The fiat of Prince Ito made clear many points with reference to the ordinance-making power of the Emperor which otherwise would have been obscure. Nevertheless, this is one of the most debatable features of the Japanese constitution, and has given rise to considerable literature. What are the limits of the ordinance-making power? According to Hozumi, "Law and imperial ordinance are both the will of the state. No matter whether resulting from the deliberation of an organ as constituted in the constitution or emanating from the Emperor himself, the determination of the will of the state establishes the law conclusively in either manner."[32] This follows from the principle that the Emperor unites in himself the "sovereign power of reigning over and governing the state." Accordingly, Hozumi and Uyesugi hold that the competence of the legislature is limited to the enumerated powers expressed in the constitution, while the scope of the Emperor's ordinance power is unlimited. Minobe, on the other hand, contends that ordinance-making is an exception to the legislative power, and that ordinances are to be issued only to establish rules

[32] Yatsuka Hozumi, *Kempo Teiyo* (1910), Vol. II, p. 860; Shinkichi Uyesugi, *Kempo Jutsugi* (1927), p. 502. Compare Tomio Nakano, *The Ordinance Power of the Japanese Emperor* (Baltimore, Johns Hopkins University Press, 1923), ch. iii.

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and regulations within limited fields.[33] This exceptional power embraces the entire range of affairs of state. Emergency imperial ordinances, in particular, are limited only to times of public stress, and theoretically invade the liberty of the subjects as set forth in the constitution. The views of Minobe fall far short of the classic contention of Jean Jacques Rousseau in the *Contrat Social* to the effect that the legislative power belongs to the people alone, and that the executive is strictly confined to carrying out the law, namely, the collective will of the community. But Minobe does not unduly exalt the parliamentary position of the Diet. In his view, the oneness of the sovereignty of the state is not necessarily incompatible with multiplicity of organs. Borrowing the phraseology of German jurists, he holds: "Die Einheit der Staatsgewalt ist nicht unvereinbar mit der Vielheit ihrer Organe."[34]

It is often said that the use of the imperial emergency ordinance is a trick of reactionary ministries under cover of the Emperor's name to secure legislation in opposition to the known will of the Diet. This view, for instance, has been expressed in an interpellation in the House of Representatives upon the emergency ordinance amending the Peace Preservation Law which the Seiyukai cabinet had issued on June 29, 1928, two months after the adjournment of the fifty-fifth Diet. The ordinance increased the penalties for "dangerous thoughts," inflicting even death upon convicted communists. In the fifty-sixth Diet, the motion to approve the ordinance with retroactive effect met bitter opposition. Two speeches in the House of Representatives by Takao Saito and Sai Taketomi deserve particular attention.[35] Both speakers claimed that the alleged emergency never existed. They also contended that the ordinance at the time of its issuance was patently in conflict with the well-known opinions of the majority of the Diet (including the Seiyukai as well as the Minseito), the majority of the House of Peers, the leading jurists and professors in the law schools, the entire press of the country, and even the majority of the privy council. Thus not only the legislative opinion of Japan, but also the national forces back of that opinion, opposed the

[33] *Kempo Oyobi Kempo-shi Kenkyu,* or Studies on the Constitution and Constitutional History (Tokyo, 1908), pp. 20-65, 67-128, and his *Kempo Seigi* (Tokyo, 1928), pp. 421-424.

[34] *Kempo Oyobi Kempo-shi Kenkyu,* p. 138.

[35] *Kwampo gogai,* February 3 and March 3, 1929, pp. 176-177, 536-544.

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ordinance. It was asserted that when the amendment of the Peace Preservation Law was considered by the Seiyukai cabinet, during the sitting of the fifty-fifth Diet, the chief of the bureau of legislative affairs informed the minister of justice that it would be impossible to secure the passage of this amendment in the Diet. Thereupon, the cabinet of Premier Tanaka decided to postpone parliamentary action and resort to an emergency ordinance issued after the adjournment of the Diet. This was done, but although a majority of the privy council were partisans of the Seiyukai, it required eighteen days of discussion, ten hours being in the presence of the Emperor himself, before the council consented to sanction an ordinance which was so palpably in contradiction to the legislative will.

Inasmuch as the Diet rejected the argument of Saito and Taketomi and approved the emergency imperial ordinance, it may be held that the theory advanced by the opponents of the ordinance was also rejected. The doctrines of Minobe and the new school have not yet become the accepted rule in Japanese politics. But the advocates of liberalism are attempting to cause them to prevail. Such episodes as the flouting of the Diet in 1928, as described above, are eloquent testimony to the fact that Japan does not yet have a parliamentary form of government.

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STATE CONSTITUTIONAL LAW IN 1931-32

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Law as it is made by the courts, interstitially as suggested by Mr. Justice Holmes, and interpreted in the cases that arise during a year, covers only a portion of the law-making process of the American states. Judicial interpretation and judicial legislation are determined largely by the types of controversies which arise involving the interpretation and application of constitutions and laws, and by the personnel of the courts before whom the issues are litigated.[1] It is difficult to discover the tendencies or trends which are in the molding during a decade or more of legal history; for such a short term as a year, generalizations or conclusions may be attempted only with great caution and with well understood reservations.

The significant decisions affecting state constitutional law in 1931-32 in the state supreme courts or courts of appeal and in the inferior federal courts may conveniently be grouped under the following headings: (1) the separation and delegation of powers; (2) the protection of civil rights; (3) due process of law and equal protection of the laws; (4) due process and public utility regulations; (5) due process and the police power; (6) taxation; and (7) miscellaneous decisions.[2]

I. SEPARATION AND DELEGATION OF POWERS[3]

A Montana act approved by the people providing for the issuance and sale of more than two millions of dollars of state bonds was held void on an injunction to prevent their issuance because the act delegated to future assemblies the duty of creating a sinking fund. The clause that "there shall be levied annually upon all property in the state subject to taxation an ad valorem tax upon each dollar of assessed valuation of such property sufficient to pay the interest accruing on said bonds and to provide an adequate sinking fund for their redemption" was deemed inadequate to meet the constitutional requirement that an

[1] See Jerome Frank, "Are Judges Human?," 80 *Univ. of Pa. Law Rev.* (Nov. and Dec., 1931), 17, 233.

[2] I am indebted to Mr. John L. Towne, research assistant in political science, for aid in selecting the cases to be considered in this article. Certain cases which normally come within the scope of the article will be discussed in a summary and analysis of decisions relating to American administrative law in 1931, by Marshall E. Dimock, in the October number of this REVIEW.

[3] See this REVIEW, Vol. XXIII, p. 689, and Vol. XXV, p. 652.

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act authorizing the issuance of bonds must provide for a levy of a tax to cover interest and extinguish the principal.[4]

The movement for the organization of a state bar with broad administrative and discretionary powers over its members[5] received a setback in a decision of the supreme court of New Mexico. Provisions of the New Mexico act, conferring authority on the board of commissioners of the state bar to suspend or disbar attorneys, were held void because such a proceeding was deemed a strictly judicial function which could not be delegated to the board.[6] The remainder of the act was held valid, and the license fee imposed was approved by virtue of an attorney's status as a member of the legal profession. The state bar acts usually confer rather broad powers of discipline on the state organizations, with authority to receive and investigate complaints, conduct hearings, and take appropriate disciplinary action by public or private reprimand, suspension, or disbarment. In Utah and Idaho, the findings and recommendations of the state board are made to the supreme court for appropriate action. The statutes of Nevada and California have been interpreted as conferring similar authority only on the board. This interpretation has avoided the objection which resulted in checking the powers of the New Mexico board.[7]

A new problem arose in Wisconsin when an attorney was suspended by the supreme court for two years and ordered to pay the cost of the proceedings. He refused to pay the costs assessed and conducted a campaign against the board of state bar commissioners and against the judges who decided adversely in his case. As a result, a bill was passed by the legislature and signed by the governor authorizing the suspended attorney to exercise all the rights and privileges of a licensed member of the bar. The supreme court, reviewing the control exercised over the bar in England and in the United States by the courts and the legislature, concluded that though the legislature may establish educational or moral qualifications for admission to the bar, the authority to admit persons to the practice of law belongs to the courts. Therefore the above act was declared void as an encroachment on the judicial power

[4] Harrin v. Erickson, 2 P. (2d) 296 (Sept., 1931).

[5] See G. W. Adams, "The Self-Governing Bar," in this REVIEW, Vol. XXVI, p. 470 et seq.

[6] *In re* Gibson, 4 P. (2d) 643 (Sept., 1931); see also *In re* Bruen, 172 P. 1152 (Wash., 1918), holding that the inherent power of the supreme court to admit attorneys to practice necessarily includes the power to disbar.

[7] See *In re* Shattuck, 279 P. 998 (Cal., 1929); Clark v. State Bar of California, 4 P. (2d) 944 (Nov., 1931); *In re* Scott, 292 P. 291 (Nov., 1930); State Bar of Oklahoma v. McGhee, 298 P. 580 (1931). The Nevada act was upheld because, it was declared, the court examines the record anew, reviewing the facts and the law. Cf. Adams, *op. cit.*, 497-481, and 15 *Minn. Law Rev.* (June, 1931), 814.

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to fix additional qualifications for attorneys, and also because it violated the constitutional inhibition against special legislation. Condemning the conduct of the attorney following his suspension, the court acceded in part to the legislative wish by agreeing to the restoration of his license upon the payment of the costs assessed in the original proceeding.[8]

Nebraska passed an act whereby in case of insolvency of a state bank the general depositors, subject to prior liens for taxes, were to have a first lien on all assets of the bank. Despite this act, recovery was allowed on a deposit which was held to have created a trust, as a preferred claim upon the general assets of a bank. The act was denied validity, as applied to the facts of the case, because, it was held, it would prevent the exercise of chancery powers conferred upon the courts by the constitution. Legislatures may not interfere with the inherent powers of courts established under the authority of the constitution.[9]

When West Virginia made the governor a member of the public service commission to investigate the effect of any proposed development of water-power upon railroads and municipalities and upon the development of natural resources, with an appeal from the decision of the commission to the circuit court for a trial on the record and upon any additional evidence, the act was declared void. Provisions in the law which authorized the commission to consider the development of natural resources from "the standpoint of the state as a whole and the people thereof," and to consider "what the public convenience requires," indicated, in the opinion of the court, that legislative duties were delegated to the governor and to the circuit court.[10] In view of the extraordinary mingling of powers in many public utility acts, this reasoning seems reminiscent of the opinions of the courts several decades ago.

The modern trend to permit a rather liberal overlapping of powers in order to aid the movement for more effective administration of local government is apparent in the approval of the Florida budget commission act. With the qualification that judicial review is preserved when private rights are involved, the court sanctioned the authorization under

[8] State v. Cannon, 240 N.W. 441 (Jan., 1932). Cf. also State v. Cannon, 221 N.W. 603 (1928), holding that the supreme court has inherent power to disbar attorneys in the exercise of original jurisdiction, deferring to statutory regulation of the matter out of comity, and 226 N.W. 385 (1929). In State Board of Law Examiners v. Phelan, 5 P. (2d) 263 (Nov., 1931), the supreme court of Wyoming held a law valid providing for the right of trial by jury in disbarment proceedings as not interfering with the inherent power of courts.

[9] State v. Farmer's State Bank of Polk, 237 N.W. 857 (July, 1931). See *Mich. Law Rev.* (Mar., 1932), 773, note 30.

[10] Hodges v. Public Service Commission, 159 S.E. 834 (Aug., 1931). See also 18 *Virginia Law Rev.* (Jan., 1932), 315.

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the act of an administrative board to determine what are reasonable expenditures and to fix the salaries of employees and deputies.[11] But, mindful of the limitations imposed by the requirements of due process of law, arbitrary power may not be delegated to administrative officers.[12]

A local option law, known as the "Park Act," which had been on the statute book of New Jersey for thirty years, came under the ban of the state supreme court. The proposal that "it shall not be submitted to the voters of any county for acceptance or rejection, unless, and until, the board of chosen freeholders of such county have by resolution so determined and provided" was condemned because the act could not take effect unless through the exercise of a discretion, or of a will intervening between the legislature and the voter.[13]

The delegation of discretionary power to administrative officers can be upheld only when reasonably definite standards are prescribed for administrative action. Thus a securities act requiring brokers' bonds with terms and in a form to be approved by the secretary of state was held void for failure to fix standards of qualifications or fitness for applicants.[14] And a statute imposing on public utilities the cost of their regulation, and permitting the public service commission to exempt a utility from the expense of an investigation when public interest requires, did not appear to involve a delegation of legislative power.[15]

A municipal ordinance which required licenses for, and regulated the operation of, magazines for storing inflammable oils was held void as a penal ordinance because no reasonable safety specifications were prescribed. The requirements that premises be kept in "a safe and proper manner" and "shall not be permitted to become or remain defective, hazardous, or dangerous" were regarded as likely to lead to arbitrary discriminations in the process of enforcement.[16]

The types of special and local acts now usually prohibited by state constitutions continue to engage the attention both of legislatures and of the courts. Thus a statute directing the county treasurer to pay certain persons amounts they paid as sureties in satisfaction of bail bonds

[11] Sparkman v. County Budget Commission, 137 So. 809 (Oct., 1931).

[12] Mayhew v. Nelson, 178 N.W. 921 (Dec., 1931), voiding an Illinois law regulating payment to, and hours of, laborers and mechanics employed under contract for public work. See *Nat. Mun. Rev.* (Mar., 1932), 189, note 21.

[13] McCarthy v. Walter, 156 A. 772 (Oct., 1931).

[14] People v. Beckman and Co., 179 N.E. 435 (Feb., 1932). See also People v. Stanley, 9 P. (2d) 288 (Colo., Feb., 1932), for objections to a statute requiring the inspection of cantaloupes and melons.

[15] Wisconsin Telephone Co. v. Public Service Comm., 240 N.W. 411 (Jan., 1932).

[16] Edwards and Broune Coal Co. v. City of Sioux City, 240 N.W. 711 (Ia., Feb., 1932).

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was refused enforcement,[17] and an attempt to classify cities so as to affect only two cities of the state was found objectionable as a local and special law.[18]

II. PROTECTION OF CIVIL RIGHTS

The proscription of opinions and the prosecution of those belonging to radical groups were continued in a case involving an indictment under the Oregon criminal syndicalism law. An attack on the validity of the law was unsuccessful, and an indictment of an illiterate Russian immigrant who had lived in this country nineteen years was sustained, under a statute making it a felony to have membership in an association which advocates political or industrial change by violence. Membership in the Communist party was held a sufficient basis for the conviction. A great deal of testimony in the form of propaganda was introduced into the record in order to prejudice the jury, there being no definite evidence of attendance at any meeting at which violence was advocated. Three justices dissented, Justice Belt commenting as follows: "The criminal syndicalism act was enacted during the late World War as a sort of emergency measure. To extend its application to a poor, ignorant sewer digger who entertains erroneous ideas concerning governmental affairs and to imprison him in the penitentiary for a period of ten years, is, in my opinion, not in keeping with the proper administration of justice. Throughout the centuries, jails have never been able to kill ideas. It is doubtful if they can do so in this modern and turbulent age."[19]

An unusual application of the constitutional privilege against self-incrimination was made by the New York court of appeals in an opinion by Chief Justice Cardozo in connection with the committee established by a joint resolution to investigate the administration and conduct of the departments of the city of New York. A party called by the committee to testify regarding the practice of the division of fees with political leaders refused to answer certain questions and was held for contempt, first by the committee, and then by the supreme court. Sections of the

[17] State v. Stone, 139 So. 328 (Ala., Jan., 1932). See also State v. County of Mower, 241 N.W. 60 (Minn., Feb., 1932).

[18] Ward v. State., *ibid.*, 416.

[19] State v. Boloff, 4 P. (2d) 326 (Oct., 1931). For similar decisions, see State v. Hennessy, 195 P. 211 (Wash., 1921); State v. Moilen 167 N.W. 345 (Minn., 1918); Commonwealth v. Widovich, 145 A. 295 (Pa., 1929). In Commonwealth v. Lazar, 157 A. 701 (Dec., 1931), a communist was convicted under the Pennsylvania sedition act and a doctrine of "constructive sedition" was announced in the contention that the intent to use force or to destroy government may be inferred. For a criticism of the Boloff decision, and for citations to other cases, see *Harv. Law Rev.* (Mar., 1932), 927, note 45.

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penal code provide immunity for testimony relating to bribery and corruption, but such immunity is limited to the offering or giving of a bribe, and does not cover conspiracy to give or offer a bribe. The constitution, maintained Chief Justice Cardozo, protects from the "reasonable possibility of prosecution," and since the party is still liable to indictment under the criminal laws of the state, he cannot be compelled to testify.

The section of the joint resolution providing for the investigating committee, which aimed to extend the immunity privilege for the witnesses called, was held void as an attempt by resolution to wipe out the criminal laws of the state. The legislature cannot suspend the criminal laws as to a person or a class of persons. Concluding his opinion, Chief Justice Cardozo said: "We are not unmindful of the public interests, of the insistent hope and need that the ways of bribers and corruptionists shall be exposed to an indignant world. Commanding as those interests are, they do not supply us with a license to palter with the truth or to twist what has been written in the statutes into something else that we should like to see. Historic liberties and privileges are not to bend from day to day 'because of some accident of immediate overwhelming interest which appeals to the feelings and distorts the judgment.' "[20]

Justice Pound dissented in part, objecting to the range of immunity accorded by the majority opinion. The supreme court of Illinois gave a similar decision on the immunity privilege in a bribery case when it held that the "witness, by reason of circumstances apparent to him though not to anyone else, may have reasonable ground to apprehend danger from his answer, and that latitude is given the witness in judging for himself the effect of any particular question."[21]

The tendency to waive jury trial in criminal cases is raising some difficult questions, particularly in the light of the traditional and well established modes of criminal procedure. A party, who on his own behalf and by his counsel waived a jury and moved that the cause be heard by the court without a jury, being tried and convicted by a jury due to the objections of the state's attorney, sought a reversal of the conviction. It was argued that jury trial as guaranteed by the constitution is a personal right, and as such must be dispensed with if the plaintiff requests. Following a review of the history of jury trial, and of the practice in other states regarding the waiver of jury trial, it was held that the thing guaranteed to the individual is not the right to waive a jury

[20] Doyle v. Hofstader, 177 N.E. 489 (Aug., 1931).

[21] People v. Rockola, 178 N.E. 384 (Oct., 1931). See *Ill. Law Rev.* (Feb., 1932), 734, note 25.

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trial, but the right to have such a trial. The fact that he may consent to waive the right so preserved to him does not give him the right to say that the prosecution shall be bound thereby. There is, continued the court, no good reason, in the absence of a statute, to hold that a right to waive a jury trial means a right to deprive the prosecution of it.[22] In a vigorous dissent, three justices claimed that the majority view enables the state to nullify the choice of the accused and reduces his power to waive a jury to a shadow.

A rather meticulous type of interpretation was followed by the California court which decided that the statute conferring on the industrial accident commission jurisdiction to award compensation for injuries to artificial members was void. Previous decisions held the procedure proper to provide medical and surgical treatment, including artificial members.[23] The commission's jurisdiction was limited, said the court, "to compensate workmen for injury or disability incurred by them, and not for injury to personal property;" the disability must be to the person or to the natural body.[24] Upholding the validity of the section of the statute involved, the supreme court reversed this decision and remanded the case to the commission for further proceedings.[25]

III. DUE PROCESS OF LAW AND THE EQUAL PROTECTION OF THE LAWS

Objections were raised to a Montana blue sky law on the ground that in the revocation or cancellation of a permit to sell securities it did not provide for notice and hearing. The chief contention was that the section of the act which authorized the revocation of a permit "at any time the investment commissioner for cause to him sufficient," or when a permittee was conducting his business in an inequitable manner, violated the due process of law clause. The plaintiff in this case was accorded a hearing; but since the statute did not provide for notice and hearing, the act was declared void. The failure to fix a standard for business "being conducted in an inequitable manner" was also considered defective.[26] District Judge Bourquin, dissenting, could see no substantial difference between the Montana act and other blue sky laws sustained by the supreme court.[27] Many commissions, federal and state, it is ob-

[22] People v. Scornavache, 179 N.E. 909 (Feb., 1932).

[23] See County of Los Angeles v. Industrial Accident Commission, 261 P. 295 (1927).

[24] Pacific Indemnity Co. v. Industrial Accident Commission, 5 P. (2d) 1 (1931).

[25] Pacific Indemnity Co. v. Industrial Accident Commission, 11 P. (2d) 1 (April, 1932).

[26] Investor's Syndicate v. Porter, 52 F. (2d) 189 (Aug., 1931).

[27] Hall v. Geiger-Jones Co., 242 U.S. 539 (1917); Caldwell v. Sioux Falls Stock Yards Co., 242 U.S. 559 (1917); Merrick v. Halsey and Co., 242 U.S. 568 (1917).

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served, are vested with more or less power to do what legislatures might do, to stipulate conditions and determine standards of quality, value, and reasonableness for purposes of business and regulation, and the statutes of this kind have usually been assailed in vain.

A statute declaring the manufacture and sale of ice a public business and requiring a license for the operation of an ice plant was held unconstitutional, such business not being affected with a public interest to such an extent as to limit the number of persons engaging in it.[28] On the authority of Wolff Packing Co. v. Court of Industrial Relations,[29] Tyson and Bro. v. Banton,[30] and Williams v. Standard Oil Co.,[31] it was the opinion of the federal circuit court of appeals that the state law was beyond the state police power.[32]

The proration system for the regulation and limitation of the production of oil and gas has resulted in a considerable amount of litigation. When the railroad commission of Texas put into effect an order requiring a drastic reduction in output so as to bring it into relation with the market demand, and the authority of the commission was sustained by the state courts, Judge Hutcheson, speaking for the federal circuit court of appeals, held the order void.[33] Denying that authority was delegated to the commission to issue such an order, he observed: "Certainly when a subordinate body like the railroad commission of Texas undertakes as here to deal in a broadly restrictive way with the right of a citizen to produce the oil which under the law of this state he owns, it must be prepared to answer his imperious query, "Is it not lawful for me to do what I will with mine own," by pointing to a clear delegation of legislative power. This must be found, not in the recitative portions of its orders, for the commission may not more than any other agent, lifting itself by its bootstraps, supply, by claiming, the power it does not have, but in the statutes themselves, which have created, which control, and which are the source of the commission's power."

However, on the authority of the Supreme Court decisions in Ohio

[28] The corporate commission had previously regulated adequate service, honest weight, and purity, as well as the price, of ice, and this authority was upheld by the state supreme court in Oklahoma L. and P. Co. v. Corporation Commission, 220 P. 54 (1923).

[29] 262 U.S. 522 (1923). [30] 273 U.S. 418 (1927). [31] 278 U.S. 235 (1929).

[32] Southwest Utility Ice Co. v. Liebmann, 52 F. (2d) 349 (Aug., 1931). For affirmance of this decision and a dissent by Justice Brandeis, see 52 S. Ct. 371.

[33] Macmillan v. Ry. Comm. of Texas 51 F. (2d) 400 (July, 1931). The state legislature, in special session, passed a new conservation bill, Aug. 12, 1931, expressly prohibiting the commission from limiting production to the "existing market demands."

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Oil Co. v. Indiana,[34] tending to protect the correlative rights of producers in a common pool, and Walls v. Midland Carbon Co.,[35] supporting the interests of the state in insuring a supply for preferred uses, the district court sustained the Oklahoma proration statute.[36] The provisions of the act define waste to include economic waste and waste incident to production in excess of "reasonable market demands." Each operator's production from a common source of supply is limited according to the ratio which the total capable well production bears to the total capable well production of all the operators of that common source. The corporation commission is authorized to ascertain facts and make rules and regulations, subject to review by the state supreme court.[37] To the majority of the judges of the lower federal court, the public interest should be given dominant consideration under present conditions in the oil industry. Judge Kennamer, dissenting, claimed that the state law results in taking one man's market and giving it to another, and that too severe penalties were imposed for waste in production or production in excess of market demands.[38]

Justice Hutcheson did not look with favor upon another Texas law prohibiting the operation on the public highway of vehicles carrying ten bales of uncompressed cotton. The act was declared to establish an unreasonable classification, to embarrass and restrict a legitimate business, and to interfere with the right of one of the public to haul his goods over the highways.[39] But the provisions of the motor vehicle act of the state of Texas regulating the size and weight of trucks was upheld by the federal courts.[40]

Courts continue to condemn statutes which contain exemptions or discriminations deemed unreasonable. A Kansas law providing for the regulation of motor vehicles on the highways was invalidated on the ground that producers' delivery of live-stock and farm products to and from markets were exempted from its provisions.[41] On a similar basis, a revocation of a license or permit was held invalid when others under

[34] 177 U.S. 190 (1900).

[35] 254 U.S. 300 (1920). See also Bandini Petroleum Co. v. Superior Court, 52 S. Ct. 103 (1931), and 18 *Amer. Bar Asso. Jour.* (Jan., 1932), 879.

[36] Champlin Refining Co. v. Corporation Comm., 51 F. (2d) 823 (Aug., 1931).

[37] Cf. *Harv. Law Rev.* (Jan., 1932), 557, note 45.

[38] See decision of supreme court in Champlin Refining Co. v. Corporation Commission, 52 S. Ct. 559 (1932), sustaining the decision of the lower court except as to certain penal sections of the act.

[39] McLeaish v. Binford, 52 F. (2d) 151 (Aug., 1931).

[40] Sproles v. Binford, 56 F. (2d) 189 and 52 S. Ct. 581 (May, 1932).

[41] Louis v. Boynton, 53 F. (2d) 471 (Oct., 1931).

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similar circumstances were permitted to continue doing business.[42] But a Pennsylvania act imposing a tax on life insurance companies excepting mutual benefit companies was deemed unobjectionable because the classification was based on a reasonable distinction.[43]

IV. DUE PROCESS AND PUBLIC UTILITY REGULATION

The state of Texas attempted an experiment in declaring that the business of operating a motor carrier of property for hire on the highways of the state is a business affected with a public interest. Such common and contract carriers were subjected to regulation under the general supervision of the railroad commission. Among the matters to be regulated under the law were the competence of drivers, security from personal injury, hours of service for drivers, inspection of equipment and load carried, and classification of highways as to congestion. The act prohibited the right of engaging in the business except under franchise, a franchise to be granted only when the conditions of the transportation system warranted. All common and contract carriers for hire were subject to regulation of rates—the minimum rates not to be less than the charges of common carriers. Justice Hutcheson, criticising the "overemphasis of the common law status" in earlier opinions relating to such regulations, upheld the law, including the strongly contested provisions authorizing the commission to maintain "a dependable transportation system for the state" and to grant or refuse a permit upon consideration of the whole transportation and traffic structure of the state. The claim that the legislature cannot convert a contract carrier into a common carrier was denied.[44]

[42] Evansville v. Gaseteria, 51 F. (2d) 232 (June, 1931); Whitney v. Watson, 157 A. 78 (Nov., 1931).

[43] Commonwealth v. Girard Life Ins., Co., 158 A. 262 (Jan., 1932). A city may not by ordinance prohibit prostitutes from appearing on the streets or in public buildings, because it unduly restricts their rights and liberties. Though committing offenses against the decencies of society and the prevailing code of morals, they are entitled to the equal protection of the laws. State v. Ashe, 161 S.E. 709 (N.Car., Jan., 1932).

[44] Stephenson v. Binford, 53 F. (2d) 509 (1931). See dissenting opinion of D. J. Kennerly claiming that the Texas act is similar to the acts of Michigan, Washington, California, and Florida, which were declared void by the Supreme Court in Michigan v. Duke, 266 U.S. 570 (1925); Buck v. Kuykendall, 267 U.S. 307 (1925); Frost Trucking Co. v. R.R. Comm., 271 U.S. 583 (1926); Smith v. Cahoon, 283 U.S. 553 (1931). The Supreme Court has not looked favorably upon the requirement for private carriers of a certificate of public convenience and necessity. Cf. 45 *Harv. Law Rev.* (Jan., 1932), 583. See also Continental Baking Co. v. Woodring, 55 F. (2d) 347 (Dec., 1931), upholding a Kansas act regulating private and contract carriers for hire.

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A Washington act regulating automobile transportation companies and requiring certificates of convenience and necessity was upheld, though similar statutes were held void by the federal Supreme Court. It was claimed that a clause of the act excluded strictly private carriers, and hence did not render it liable to the objections which resulted in declaring other acts void.[45] In considering an application for a certificate of convenience and necessity to operate a motor coach line under an Illinois law, it was held that the review of the commission's order is limited to the question of jurisdiction and "whether the order has substantial foundation in the evidence and whether any substantial right has been infringed."[46] Findings of fact will not be disturbed if there is substantial evidence for an order.[47] If a fair hearing is accorded, and there is substantial evidence, an order relating to a certificate of public convenience will be considered conclusive on all parties concerned. Judicial review in such instances is limited to a determination whether "the procedure followed contravenes those principles of fairness and justice required by due process of law, or that the administrative body has exceeded its jurisdiction."[48] A new criterion for the review of administrative action has been announced by the Supreme Court of the United States.[49] The doctrine announced in this case is likely to result in a modification of the practice now prevailing in state courts relative to certain phases of the review of administrative procedure.

A public service commission may not fix a minimum gas rate where a utility seeks to lower rates for the purpose of self-preservation on account of the joint occupancy with a rival of a field which can reasonably support only one. District Judge Bourquin, speaking of the "inalienable right of self-preservation," with the concurrence of two other federal judges, reversed the decision of District Judge Leiper upholding the right to fix minimum rates,[50] regardless of a Montana statute granting the public service commission such authority. A state may limit the number of utilities operating in a field, but it may not prevent the survival of the fittest through the right of competition.[51] The Interstate Com-

[45] State v. Inland Forwarding Corp. 2 P. (2d) 888 (Sept., 1931).

[46] Chicago, B. and Q. R. Co. v. Ill. Commerce Comm., 178 N.E. 157 (Oct., 1931).

[47] Cf. also Southside Transp. Co. v. Commonwealth, 161 S.E. 895 (S. Car., Jan., 1932).

[48] District Judge Hollzer, in Ashbury Truck Co. v. Ry. Comm. of Calif., 52 F. (2d) 263 (Aug., 1931).

[49] See Crowell v. Benson, 52 S. Ct. 285 (1932), and article by John Dickinson, "Crowell v. Benson: Judicial Review of Administrative Determinations of Questions of 'Constitutional Fact'," 80 *Univ. of Pa. Law Rev.* (June, 1932), 1055.

[50] Great Northern Utilities Co. v. Public Service Comm., 293 P. 294 (1930).

[51] Great Northern Utilities Co. v. Public Service Comm. 52 F. (2d) 802 (Aug., 1931). Cf. 80 *Univ. of Pa. Law Rev.* (Feb., 1932), 602.

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merce Commission has been denied the authority to fix minimum rates, but the state courts have frequently upheld this power.[52] On the other hand, the decision of a public service commission, which after an elaborate process of valuation prepared an experimental schedule of gas rates reserving the right to make changes at any time, was held reasonable.[53]

In a contest of the city of Milwaukee with the state railway commission, the commission's order including in the street railway's single-fare zone suburban area served by the urban system was held reasonable, but an order fixing rates and fare zones so as not to allow a fair return on the value of the railway property, and necessitating the using of the company's electric utility earnings to meet a deficit in railway operations, was held void as unreasonable and confiscatory.[54]

The Montana supreme court, reversing in part an earlier holding,[55] declared that the railroad commission's determination that an existing tariff is unreasonable cannot affect the rates theretofore paid thereunder, and that neither the shipper nor the railroad has a right of reparation with respect to rates paid if they were previously fixed by the commission.[56] Rates according to the Montana law are not voluntary rates initiated and filed by the carriers; hence the power of the Interstate Commerce Commission to declare a rate unreasonable or discriminatory retroactively, and to award reparation, was held inapplicable to state law and procedure.[57]

V. DUE PROCESS AND THE POLICE POWER

On the authority of Tumey v. Ohio,[58] the action of city commissioners was attacked because in establishing a sewer district outside of the municipality the commissioners had received a per diem and percentage of the entire cost. The mayor in the Tumey Case received $12 for hearing misdemeanor cases, the fees being allowed only in case of a judgment against the defendant. Chief Justice Taft, for the Supreme Court, maintained that officers acting in a judicial or quasi-judicial capacity are disqualified by interest in the controversy. But since the Supreme Court

[52] For citation of cases, see 10 *N. Car. Law Rev.* (April, 1932), 318.

[53] State v. Public Service Commission, 47 S.W. (2d) 102 (Mo., Nov., 1931).

[54] City of Milwaukee v. Ry. Comm. 240 N.W. 165 (Jan., 1932). The federal holding in United Railways v. West, 280 U.S. 234 (1930), was cited and followed.

[55] Doney v. Northern Pacific Railway Co. 199 P. 432 (1932).

[56] Montana Horse Products Co. v. Great Northern Ry. Co. 7 P. (2d) 919 (Feb., 1932).

[57] See opinion of Justice Roberts in Arizona Grocery Co. v. A.T.S.F. Ry. Co., 52 S. Ct. 183 (Jan., 1932). Justices Holmes and Brandeis dissented from this opinion and judgment, and approved the reasoning of Justice Hutcheson in Eagle Cotton Oil Co. v. Southern Railway Co. 51 F. (2d) 445 (July, 1931).

[58] 273 U.S. 510 (1927).

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did not declare the judgment in the Tumey Case void, the state supreme court, by a divided vote, concluded that the judgment was only declared to be voidable. Other state courts have followed this ruling, adopting the view that a judgment is valid even if a judge is disqualified.

Though the establishment by the commissioners of a sewer district was not justified as a health measure, and was a flagrant abuse of power and a violation of trust imposed, since it was intended to promote the plotting and sale of lots in a district comprised of farm lands used exclusively for agricultural purposes, their action was held valid.[59] Despite the bad policy and unwisdom of the commissioner's conduct, innocent bondholders must be protected, and the taxpayers must suffer for choosing wrong officials as their agents. Justices Allen and Robinson dissented because, in their opinion, the tax to pay for the bonds was not levied for a public purpose. They protested against the decision of the majority in reversing a former judgment in order to protect the bondholders in this case.

Kentucky reënacted in 1926 a Sunday prohibitory law modeled after the statute of 29 Charles II, with exemptions applicable to railroads, boats, and street cars, and to amateur sports and athletic games. An operator of a motion picture theatre, convicted for violating the act, contested the validity of the law and the inequality of its enforcement. The discriminatory features of the law were not regarded as affecting its validity, and the failure to enforce its provisions upon other associations and individuals disobeying it was thought to be no excuse for its violation. The penal sections of the act included a proviso that every person employed in violation of the law should be deemed a separate offense. Hence an indictment for three offenses, employing on three occasions 11, 9, and 7 persons, was held erroneous as the state should have instituted 27 indictments. Thus an indictment for a violation of the statute was dismissed for improper procedure. Three justices disagreed with this strict interpretation of the language of the act and the humane spirit which perhaps prompted its application.[60]

The principle which the courts have interpreted as an implication of the "due process" and "equal protection" phrases, that the legislature may not pronounce an innocent act criminal when the public health, safety, or welfare is not interfered with,[61] was applied by the Illinois supreme court. No justification could be found for a "filled milk" statute prohibiting the manufacture or sale of milk products containing any

[59] State v. Board of Commrs. of Allen Co. 177 N.E. 271 (Ohio, June, 1931).

[60] Strand Amusement Co. v. Commonwealth 43 S.W. (2d) 321 (Nov., 1931).

[61] Weaver v. Palmer Bros. Co., 270 U.S. 402 (1926), invalidating a Pennsylvania statute preventing the use of shoddy in the manufacture of bedding.

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fat or oil other than milk fat, as applied to a manufacturer of evaporated milk using cocoanut oil. The use of cocoanut oil being permitted in the manufacture of oleomargerine, and its wholesomeness for certain purposes being admitted, the legislature was denied the right to interfere with the calling or to invade the property rights concerned.[62]

The wide latitude frequently accorded to legislatures in the exercise of the police power was indicated in the approval of the amendment to an act relating to citrous fruits, making it a criminal offense to use arsenical sprays on bearing citrous trees. Rules and regulations issued by the commissioner of agriculture under this amendment directing inspectors to go upon the private property of persons where they have reason to believe citrous fruit has been sprayed with arsenic spray and to destroy the property, it was held, must be construed strictly and be based upon express statutory language. With certain designated exceptions, the court supported a broad grant of the police power within which to pass laws to foster, promote, and protect the citrous fruit industry.[63]

Though consent provisions in zoning ordinances have usually been held invalid,[64] a section of an ordinance permitting the use of property in a commercial district for a gasoline station, with the written consent of a majority of all property owners fronting on the same block within eighty feet of the site in question, was upheld. Such a consent provision was thought to be merely a limited delegation of authority or discretion.[65] But a zoning ordinance providing for a side-yard set-back on a corner lot contiguous to a residence district, the width of the yard varying with the width of the corner lot, was held void.[66]

VI. TAXATION

Many cases were passed on during the year relating to the taxing power of the different divisions of state government, but not many of them involved matters of more than local interest. Among these, a few are worthy of brief mention. The notes of a municipality for stock in a

[62] People v. Carolene Products Co. 177 N.E. 698 (June, 1931).

[63] L. Maxcy, Inc. v. Mayo, 139 So. 121 (Fla., Jan., 1932).

[64] See Washington v. Roberga, 278 U.S. 116 (1928).

[65] Appeal of Perrin, 156 A. 305 (June, 1931). The reasoning of Cusack Co. v. City of Chicago, 242 U.S. 526 (1917), was considered as controlling in this case. See this REVIEW, Vol. XXII, p. 632.

[66] Holden Co. v. Connor, 241 N.W. 915 (Mich., Apr., 1932). Justice Potter, speaking for the court, adopted and defended the dictum attributed to Supreme Court Justice Butler that we have "a government instituted principally for the protection of property." The chief justice and two associate justices disagreed with the majority opinion and defended the view that other values, including æsthetic interests, deserve protection as well as property, according to the common law concepts.

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proposed silk-mill were held void, since their liquidation involved the exercise of the taxing power for an object not essentially public. The argument that the owners of the bonds are *bona fide* holders for value, and that the recitals in the bonds were equivalent to an official representation that every requirement of the law was complied with, was refuted by the contention that if the municipality has no statutory power to issue the bonds it cannot be stopped by a recital in them from pleading its lack of power.[67]

The supreme court of South Dakota rendered an advisory opinion applying the doctrine of public purpose for taxation. The governor sought the advice of the justices as to whether the legislature could appropriate feed or money for caring for live-stock during the winter. It was proposed to divert to this object funds now on hand raised by the gasoline tax or funds raised by additional taxation. The South Dakota constitution provides that "taxes shall be levied and collected for public purposes only." Following the reasoning of Cooley[68] and the earlier cases in other states,[69] the court was of the opinion that the legislature could not constitutionally appropriate money for the suggested purposes.[70] Recent decisions have supported legislative authority to relieve group distress.[71]

It seems that a statute authorizing the use of county funds to advertize community resources was carried too far in the attempt to enter into a contract for the establishment of a private broadcasting station. The section of the constitution called into service to prevent such a laudable object was the prohibition against the granting of "public money or things of value in aid of, or to any individual, association, or corporation."[72]

The attempt of the states to check the commonly-resorted-to attempt to evade inheritance taxation by gifts in contemplation of death, and transfers, in trust or otherwise, whereby the transferor reserves to himself the life use or income for life, was again condemned by the Connecticut supreme court.[73] By the Connecticut law, a tax shall be levied upon property "which shall pass by deed, grant, sale, or gift made or

[67] Bolton v. Wharton, 161 S.E. 454 (S. Car., 1931).

[68] *Cooley on Taxation* (4th ed.)., secs. 174 et seq.

[69] State v. Township of Osawkee, 14 Kan. 418, 19 Am. Rep. 99, (1875); Lowell v. City of Boston, 111 Mass. 454, 15 Am. Rep. 39 (1873). For opinion *contra*, see State v. Nelson County, 45 N.W. 33 (1890).

[70] *In re* Opinion of Judges, 240 S.W. 600 (Feb., 1932).

[71] State v. Wienrich, 170 P. 942 (1918), and Cobb v. Parnell, 36 S.W. (2d) 388 1931). Cf. 41 *Yale Law Jour.* (Mar., 1932), 779, note.

[72] Stone v. State, 136 So. 727 (Oct., 1931).

[73] Blodgett v. Bennett, 158 A. 245 (Jan., 1932).

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intended to take effect in possession or enjoyment after the death of the grantor to any person in trust or otherwise.'' Though such provisions have frequently been enacted in the states, and have for a long while occasioned a great deal of litigation, their constitutionality has not been considered as open to question.[74] Certain issues in relation to such provisions have been raised anew by decisions of the Supreme Court of the United States.[75] In the opinion of the state justices, these federal decisions were ''motivated by the nature of the federal estate tax, which is upon the transfer of, rather than the succession to, property of the decedent.'' State laws, on the other hand, generally levy a duty or excise upon the beneficiary for the privilege or right of succession to property. The Connecticut law being of this type, the court could see no reason for following the federal rule and reversing its own decisions.

In Town of Hartland v. Damon's Estate,[76] an act imposing penalties on decedent's estate for failure to list intangibles for taxation was held valid. The Connecticut tax disapproved by the Supreme Court[77] was applied to all property of the estate, whereas the Vermont tax was applicable only to intangibles. All estates being treated alike under similar circumstances, the tax was regarded as non-discriminatory under the due-process clause.

The levy of a second gas tax of three cents a gallon by Florida to reimburse counties and special road districts for money expended on roads now taken over by the state was approved by the supreme court. Such payments were justified ''upon moral and equitable considerations . . . the power to ascertain and determine the obligations within this class being entirely political and legislative.''[78] Under the provision of the constitution which prohibits the issuance of state bonds for road purposes, it was previously held that the legislature may not levy a tax for the purpose of paying county or district bonds issued, on the ground that the expenditure was for the general welfare of the state.[79]

State sales taxes were attacked as interfering with interstate commerce. A tax of four cents a gallon on gasoline used in operating an air line in interstate commerce was upheld on the ground that the proceeds

[74] Henry Rottschaefer, ''Taxation of Transfers Intended to Take Effect in Possession or Enjoyment at Grantor's Death,'' 14 *Minn. Law Rev.* (April and May, 1930), 453, 613; 49 A.L.R. 864 et seq. and 67 A.L.R. 1247 et seq.

[75] Reinecke v. Northern Trust Co., 278 U.S. 339 (1929); Max v. Heiner, 281 U.S. 238 (1930); Commissioner v. Northern Trust Co., 283 U.S. 782 (1931).

[76] 156 A. 518 (Oct., 1931).

[77] Bankers' Trust Co. v. Blodgett, 260 U.S. 647 (1923).

[78] Carlton v. Mathews, 137 So. 815 (Nov., 1931).

[79] Amos v. Mathews, 126 So. 308 (1930). On the reasoning of this case, two justices dissented in the Carlton Case.

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were used for the maintenance of municipal airports.[80] A similar tax was held valid for the reason that the tax was non-discriminatory and was used for the roads.[81]

A fraternity was denied the privilege of tax exemption on its chapter house as a charitable undertaking, because tax exemption statutes must be interpreted strictly. To be exempt, an organization must have charitable undertakings as a principal object, and must relieve the commonwealth of some of its tax burdens.[83] According to a Texas court, "purely public charity" means that an organization is one whose property is used wholly and exclusively for charitable purposes. Hence a secret fraternal and social organization which has all the conveniences and amusement features of a club was held not to be exempt from taxation, although it does much charitable work.[84]

On the other hand, a Masonic temple and lots on which the temple is situated were held exempt from taxation as property used exclusively for "educational, religious and charitable purposes." The primary objects of masonry were held to be religious and educational in the broad sense of these terms.[85] But, following the rule of strict construction, the provisions of the World War Adjusted Compensation Act, which exempted from all taxation the "compensation, insurance, and maintenance and support allowances," were held, by the Alabama supreme court, not to exempt from state and local taxation lands purchased by a veteran with adjusted compensation funds.[86]

A city ordinance requiring a license tax on laundries of $150 a year, with a proviso of a $300 tax when work is done outside of the city, was denied application as an unreasonable and arbitrary classification.[87] Another ordinance vesting in the mayor power to charge transient

[80] Boeing Air Transport v. Edelman, 51 F. (2d) 130 (June, 1931).

[81] Eastern Air Transport, Inc. v. South Carolina Tax Commission, 52 F. (2d) 456 (Sept., 1931). For approval of this decision by the Supreme Court, see opinion of Chief Justice Hughes, 52 S. Ct. 340. Helson and Randolph v. Kentucky, 279 U.S. 245 (1929), is distinguished as a tax "as the price of the privilege of using an instrumentality of interstate commerce" and not a general property tax or a tax upon purely local sales. Cf. 45 *Harv. Law Rev.* (Dec., 31), 384.

[83] Beta Xi Chapter of Beta Theta Pi v. City of New Orleans, 137 So. 204 (Oct., 1931).

[84] Lodge No. 151 v. City of Houston, 44 S.W. (2d) 488 (Dec., 1931).

[85] Ancient, etc., S.R. of Free Masonry v. Board of Co. Commrs., 241 N.W. 93 (Neb., Feb., 1932). Cf. p. 98, *op. cit.*, for citations for and against the holding in this case.

[86] State v. Wright, 140 So. 584 (Mar., 1932). See also Newman F. Baker, "Judicial Interpretation of Tax Exemption Statutes," 8 *Texas Law Rev.* (April, 1929), on the rule of strict construction and on exceptions to this rule.

[87] City of Newman v. Atlanta Laundries, 162 S.E. 497 (Ga., Jan., 1932). For similar holding, see American Bakeries Co. v. City of Griffin, 162 S.E. 513 (Jan., 1932).

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merchants license fees of from $5 to $100 a day, with authority to fix the length of time for which a license is issued, was held void as arbitrary and unreasonable. So were condemned statutes authorizing the state board of equalization to raise individual assessments without providing for notice to the taxpayer or for administrative or judicial review.[88]

When the assessor of the city of St. Louis included the salary of a circuit judge in the levy of the state income tax, the tax was protested on the ground that it violated the constitutional provision that the salaries of judges shall not be diminished during their term of office. The supreme court of Missouri, however, held the salary taxable, claiming that there are no limits on the taxing power except such as are expressly imposed by the state and federal constitutions.[89] A different rule was followed in this case from that approved by the Supreme Court of the United States.[90] The reasoning of the state court in limiting the doctrine of implied prohibitions, which was introduced into federal constitutional law by Chief Justice Marshall,[91] and has been greatly extended since, seems more rational and practical than the federal rule. It accords also with the interpretation of similar statutes in Canada and Australia.[92]

VII. MISCELLANEOUS DECISIONS

For many years, among the most frequent justifications for declarations by the courts that statutes were void was the constitutional provision that a bill "shall contain no more than one subject, which shall be clearly expressed in its title." Though a considerable number of statutory provisions are attacked on this ground, relatively few are annulled. An act to create a public service commission, prescribing its powers and duties, included a section authorizing the commission to supervise municipalities engaged in manufacturing and supplying electricity for lighting and power. This section was held void as not clearly expressed in the title.[93] A statute providing for a tax lien for the value of improvements was invalidated for granting rights and imposing burdens not included in the title,[94] and similar objections were raised to sections of

[88] Beveridge v. Baer, 241 N.W. 727 (S. Dak., Mar., 1932).

[89] Taylor v. Gehner, 45 S.W. (2d) 59 (Jan., 1932).

[90] Cf. Miles v. Graham, 268 U.S. 501 (1925), in which it was held that "there is no power to tax a judge of a court of the United States on account of the salary prescribed for him by law."

[91] McCulloch v. Maryland, 4 Wheat. 316, 425 (1819).

[92] See my articles, "Judicial Review of Legislation in Canada," 28 *Harv. Law Rev.* (April, 1915), 565, 571, and "Judicial Interpretation of the Constitution Act of the Commonwealth of Australia," 30 *Harv. Law Rev.* (April, 1917), 595, 602 et seq.

[93] City of Columbia v. State Public Service Commission, 43 S.W. (2d) 813 (Nov., 1931). See also State v. Johnson, 137 So. 126 (Oct., 1931), and Roberts v. Commonwealth, 44 S.W. (2d) 577 (Dec., 1931).

[94] Casner v. Meriwether, 4 P. (2d) 19 (Oct., 1931).

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an act conferring upon a state board of health power to adopt a plumbing code.[95]

The dire consequences of a mistaken judgment by an individual as to the validity of a law were demonstrated in a decision by the Arkansas supreme court. Several statutes were enacted prohibiting the killing of squirrels except in certain seasons. A person killing a squirrel at a time which came within the closed season of the first statute, but within the open season of the subsequent laws thought to supersede the earlier act, was convicted. On appeal, this conviction was affirmed, since the later acts were unconstitutional. The rule that ignorance of the law is no excuse for its violation was carried in this case to an unjust result.[96]

A type of "bad check" law which had passed the hurdle of constitutional resistance in a number of states[97] was invalidated by the supreme court of South Dakota on the ground that it violated the provision forbidding imprisonment for debt founded on contract. The objectionable proviso was that prosecution should be barred if the check were honored, or if the drawer should prove that he had issued it without intent to defraud and should pay into court the amount of the check and costs.[98] The real issue involved was whether the statute might be construed as merely denouncing the issuance of bad checks or the non-payment of such checks. The adoption of the latter interpretation would seem to require its invalidation; there are good grounds, however, for accepting the former alternative.

The controversy which was waged in the political forum regarding the governorship of Louisiana came to the courts in the appeal of Lieutenant-Governor Cyr to oust Long from the office of governor through an intrusion from office suit. Long, who had served as governor of the state since May, 1928, was elected to the United States Senate in November, 1930. After Long had presented his credentials to the Senate and had taken the necessary steps to service in that body, Cyr took the oath of office as governor and claimed the right to exercise the duties and functions of the office. Long refused to relinquish the office, and claimed that the courts had no jurisdiction to determine his right to continue to hold it. First, the court held that though Long's credentials had been presented to the Senate, that body had not passed upon the credentials in its judicial capacity, and that hence he was not a fully recognized senator, not having been legally inducted into office. Second, the state constitution, it was held, provides only one way to remove a governor,

[95] State Board of Health v. Willman, 45 S.W. (2d) 458 (Ky., Jan., 1932).

[96] Dupree v. State, 44 S.W. (2d) 1097 (Jan., 1932).

[97] State v. Avery, 207 P. 838 (Kan., 1922), and Collier v. State, 40 S.W. (2d) 455 (Ark., 1931).

[98] State v. Portwood, 238 N.W. 879 (Nov., 1931).

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i.e., by impeachment. Therefore, the attack on the court's jurisdiction was successful.[99]

The attempt to give extra weight to the votes of property owners usually fall before constitutional provisions interpreted to the effect that "every qualified voter may freely exercise the right to cast his vote without restraint or coercion of any kind, and that his vote when cast shall have the same influence as that of any other voter." Thus the supreme court of Wyoming held void a law limiting the right to vote in bond elections to taxpayers and the wives or husbands of owners of real property.[100] But the same court refused to follow the literal interpretation of the general rule by upholding a law with a provision that in school elections involving the question of the issue of bonds, two ballot boxes must be provided as follows: "A" for white ballots for non-property owners or their spouses, and "B" for colored ballots for property owners or their spouses. Affidavits regarding the ownership of property were to be taken before the judges of the election; and to approve a bond issue, there must be a favorable majority of the votes in each box. The general rule was interpreted to mean that all the qualified voters, whether property owners or not, should have opportunity to express their will concerning the creation of public indebtedness, but that no more is required by the express language of the constitution.[101]

Declaring that the Nineteenth Amendment prohibits discrimination because of sex in suffrage laws, the Kentucky supreme court held that a statute prescribing a literacy test for women in school elections was void. It was judicially asserted that illiterate women have equal rights with illiterate men so far as election regulations are concerned.[102]

An interesting constitutional issue arose when the members of the legislature of South Carolina voted a payment of $260 for expenses for each member in addition to the $400 salary and mileage provided in the constitution. On an action by a taxpayer to prevent issuance of vouchers for the extra allowance, the court held that the legislative designation as an expense payment was correct, and that no increase in compensation was provided. The petitioner, it was contended, was unable to show that the money was paid for personal expenses. The principle of interpretation was followed that the provisions of the constitution should not be construed to place limitations beyond their clear meaning.[103]

[99] State *ex rel.* Cyr v. Long, 140 So. 13 (Jan., 1932). For summary of opinion in similar cases, see 18 et seq. Three justices thought the court had jurisdiction and should have determined the issues raised.

[100] Simkin v. City of Rock Springs, 237 P. 245 (1925).

[101] State v. Johnson County High School, 5 P. (2d) 255 (Nov., 1931).

[102] Prewitt v. Wilson, 46 S.W. (2d) 90 (Feb., 1932).

[103] Scroggie v. Scarborough, 160 S.E. 596 (Sept., 1931). For opposite doctrine, see

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The governor of Michigan, after reducing a number of specific items in the general appropriation act of 1931, filed the bill with the secretary of state instead of returning it to the originating house of the legislature. The veto power in Michigan does not include the authority to modify a bill or disapprove it in part. On an injunction to prevent the spending of money under this bill, the court held that the bill, not having been returned within the specified period to the originating house, had become a law. The legislature had adjourned temporarily, and the ten-day period for returning a bill with objections expired before reconvening. The weight of authority, it was claimed, is that only final adjournment prevents return of a bill on veto. The reasoning in the leading federal pocket-veto case,[104] that the adjournment of the first regular session of a Congress prevents return of a bill to it, although Congress continues in existence for another session, was rejected because it was thought that it would destroy effective use of the veto power. It was held that only adjournment without day calls into operation the provision for a pocket veto.[105]

The recent apportionment act passed by Congress, which required a revision of congressional districts in many states, has raised a constitutional issue on which legislative practice and state judicial decisions differ. In New York, a concurrent resolution of the legislature dividing the state into forty-five congressional districts was declared ineffective as not "a law," because it was not submitted to the governor for his approval. Reapportionment was held to require a law in the ordinary sense of the term, and to involve the participation of the governor.[106]

By the congressional reapportionment act, the representatives in Congress from Minnesota were reduced from ten to nine. A state redistricting law was vetoed by the governor. The house of representatives, ignoring the governor's veto, sent an enrolled copy of the bill to the secretary of state. Filing fees for candidates were accepted by the secretary in accordance with the bill. This action was contested on the ground that the house bill was not a law, and that a districting provision of the former law was still in effect.

Apportionment of representatives, the Minnesota court held, is a federal matter, and belongs by the constitution to the legislature, acting in this capacity "as representatives of the people of the state;" in this function the governor has no part, his veto relating exclusively to state affairs. The fact that former bills of this kind were approved by the

State v. Thomason, 221 S.W. 491 (Tenn., 1920), and Dixon v. Shaw, 253 P. 500 (Okla., 1927).

[104] The Pocket-Veto Case, 279 U.S. 655 (1929).

[105] Wood v. State Adm. Board, 238 N.W. 16 (Sept., 1931).

[106] Koenig v. Flynn, 179 N.E. 705 (Feb., 1932).

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governor, and that the opposite doctrine had been approved in other states,[107] did not seem controlling in this case.[108] To the supreme court of Missouri, a redistricting bill vetoed by the governor was not a "legislative act" and conferred no duty on the secretary of state to accept declarations of candidacy for Congress. Since the number of representatives in Congress for Missouri had been reduced, the former districts no longer existed, and representatives must, until the state is redistricted by law, be elected at large. It remains to be seen whether the reasoning of the Minnesota court or that adopted by South Dakota, New York, and Missouri will prevail.

As a reflection of conditions arising from the period of economic depression, some unusual provisions in the contract for the construction of storm sewers in Salt Lake City came up for interpretation. The pertinent provisions are as follows: "The provisions which the defendants insist shall be inserted in the contracts, and of which complaint is made, in brief, are as follows: the contractors agree . . . (1) that all excavating, loading, and back filling shall be done with hand labor, except that teams and tractors may be used for plowing and loosening the materials to be moved; (2) that contractors shall rotate all common labor, and, so far as practicable, all other labor once each week and shall not employ any workman more than two weeks in any month, nor shall they employ any workman in any month who has had two weeks' work from any source during any given month if there are other men who are unemployed and available. An agency is set up by the commissioners to register all laborers with reference to such desired information, such agency shall not refuse registration to any able-bodied citizen of the United States who has been a *bona fide* resident of Salt Lake City for the past year; (3) preference in employment shall be given to citizens of the United States or those having declared their intention to become such, and particularly residents and heads of families of Salt Lake City; (4) eight hours shall constitute a day's labor; (5) $3.50 per day shall be paid as a minimum wage." It is admitted that the requirements calling for hand labor and for rotation of labor will increase the cost of construction about ten per cent, and that the unusual and restrictive specifications were required by the city commissioners in order to improve unemployment conditions.

[107] State v. Polley, 127 N.W. 848 (1910). See also Koenig v. Flynn, *supra*.

[108] State v. Holm, 238 N.W. 494 (Oct., 1931). Justices Dibell and Stone dissented. The governor's veto has been deemed inapplicable to federal constitutional amendments, *In re* Opinion of Justices, 107 A. 673 (1919). But in upholding the right of a referendum on a redistricting act, the Supreme Court of the United States regarded the legislative power relative to the election of congressmen as differing from the power relative to constitutional amendments.

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Following the general rule that municipalities have only such powers as are expressly granted and such incidental powers as are necessary to give effect to powers expressly granted, the court held that the provisions relating to hand labor, rotation of labor, a minimum wage, and preference to heads of families exceeded the authority of the city and were illegal. It was also insisted that refusal to advertize for bids and to let the contract to the lowest bidder without the above specifications would involve the expenditure of money for other than a public purpose. Two dissenting justices could find no restrictions in the state laws or the city charter to prevent the action as proposed by the commissioners. The court's opinion and judgment, it was claimed, invaded the field of policy which belongs to the legislative branch of the city government.[109]

The majority of the justices in this case, following a practice frequently indulged in, took too seriously their duties and responsibilities to guide and control the attempts to relieve the prevailing conditions of unemployment. There are numerous decisions upholding the authority of municipalities engaged in public works to prescribe, among other things, the qualifications of laborers, minimum wages, and maximum hours of labor. Decisions ruling adversely to such powers, especially when they are not required by express statutory provisions, are to be deplored, because they bar state and local agencies from using what are deemed to be rational and effective methods of meeting the present emergency.[110]

As a check is made of the grist which the mill of the higher courts turn out, one is impressed with the comment of former Justice John H. Clarke on the work of the Supreme Court of the United States prior to the 1925 Judiciary Act, that a considerable part of the reviewing process of appellate courts is devoted to the hearing and decision of unimportant or frivolous cases. Among the classes of cases which consume considerable time of the higher courts, federal and state, and which require frequent restatements of well settled rules, with slight if any variations in facts, are: search and seizure cases, controversies in the field of industrial accidents involving master and servant relationships and the validity of hearings and conclusions of industrial accident boards, and issues arising under the due process of law provision. Too great liberality in permitting appeals appears to prevail, both by statute and by judicial practice, and it must be profitable to lawyers and clients in certain controversial fields to secure judicial reiterations of the obvious.

[109] Bohn v. Salt Lake City, 8 P. (2d) 591 (Jan., 1932).

[110] Cf. *Univ. of Pa. Law Rev.* (June, 1932), 1167, note 80.

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NOTES ON MUNICIPAL AFFAIRS

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Municipal Legalizing Acts in Iowa. A legalizing act, or, as it is more frequently called in other jurisdictions, a "curative statute," may be defined as a retroactive statute making valid official or non-official acts in spite of the known or suspected illegality of the procedure through which they were authorized. It is obvious that many such acts in effect will expand the scope of municipal authority and hence, speaking strictly, are curative of substantive limitations rather than of wholly procedural errors. In order to differentiate between these two classes, it would be necessary to know the actual effect produced by each act. The material for such a study is unfortunately not available.

In the present note, it is proposed to describe statutes of this nature relating to cities and towns enacted by the Iowa legislature during the past ten years. A typical example will clarify the foregoing definition. The Iowa Code of 1927 prescribed somewhat detailed procedure to be followed by a city council in granting franchises to public utilities, involving, among other things, the holding of a special election on the question. Both because the procedure is involved and because it is not a part of the routine work of the council, errors in carrying out the election are apt to occur. The company to which the franchise is granted usually wishes to issue bonds, and the legality of the franchise is absolutely essential. As a consequence, the utility corporation itself, even in cases where there has been no apparent irregularity, is anxious to insure itself against subsequent objections. The remedy—whether the irregularity is known or merely suspected—is the legalizing act. The legislature says in effect that, whether the council procedure did or did not follow the method set forth in the Code, the franchise is valid.

Numerous other kinds of errors can be remedied by this same method, although it is not within the competence of the legislature to remedy every municipal error. A discussion of the limitations on legislative power in this field is too complex to be undertaken here, but the rule may be stated in general terms. Where the legislature possesses the power to authorize a municipality to perform an act, it may by retrospective action legalize and declare valid a previous performance of the act as well as cure any informality or irregularity in such performance. The limitations on the legislature's power are found chiefly in the constitution of the United States and in the Iowa constitution, notably in the sections of the latter document relating to special and general legislation, due

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process of law, the obligation of contracts, uniformity of operation of laws, and the prohibition of municipal indebtedness in excess of five per cent of the taxable value of the property within the city or town. Approximately seventy decisions involving the interpretation of legalizing acts have been rendered by the Iowa supreme court, and it is consequently possible to define with accuracy the legislature's authority in this field.

Several questions present themselves immediately: How frequently is

TABLE I. LEGALIZING BILLS AND ACTS

	Session of Legislature						
	1921	*1923*	*1925*	*1927*	*1929*	*1931*	*Average*
Total bills introduced	1,147	1,607	747	968	1,055	1,021	1,091
Total legalizing bills introduced	92	64	31	41	75	35	56
Total municipal legalizing bills introduced	39	22	18	21	26	10	23
Ratio (in per cent) of total legalizing bills to total bills introduced	8.02	3.98	4.14	4.23	7.10	3.42	5.15
Ratio (in per cent) of total municipal legalizing bills to total bills introduced	3.40	1.36	2.40	2.16	2.46	.97	2.11
Ratio (in per cent) of total municipal legalizing bills to total legalizing bills introduced	42.38	34.37	58.06	51.21	34.66	28.57	41.54
Total acts passed	410	392	284	364	404	343	366
Total legalizing acts passed	61	44	27	31	49	18	38
Total municipal legalizing acts passed	27	16	15	18	18	5	16
Ratio (in per cent) of total legalizing acts to total acts passed	14.87	11.22	9.49	8.51	12.12	5.24	10.24
Ratio (in per cent) of total municipal legalizing acts to total acts passed	6.58	4.08	5.27	4.12	4.45	1.45	4.36
Ratio (in per cent) of total municipal legalizing acts to total legalizing acts passed	44.26	36.36	55.55	58.06	36.73	27.77	43.10
Ratio (in per cent) of total acts passed to total bills introduced	35.74	24.39	38.01	37.60	38.29	33.55	34.59
Ratio (in per cent) of total legalizing acts to total legalizing bills introduced	66.30	68.75	87.09	75.60	65.33	51.47	69.09
Ratio (in per cent) of total municipal legalizing acts passed to total municipal legalizing bills introduced	69.23	72.72	83.33	85.71	69.23	50.00	69.56

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the General Assembly called upon to enact municipal legalizing acts? Is it disposed to grant or to refuse such remedies? What are the typical irregularities which cities ask to have validated? The accompanying tables answer these questions.

During the last eleven years (1921-32), the General Assembly has held six sessions. In this period, the total number of bills introduced per session has ranged from 747 in 1925 to 1,607 in 1923, the average being 1,091. From 31 (in 1925) to 92 (in 1921) were legalizing acts, the average number being 58—approximately five per cent of all bills introduced.

A very large proportion of these legalizing bills dealt with municipalities. In 1925, over 58 per cent of all such bills involved cities or towns, while the smallest absolute number (10) and the lowest proportionate number (over 28 per cent) occurred in 1931. The average for the period was 41.54 per cent. The remaining bills involved state officers, counties, townships, school districts, private corporations, and private individuals.

The legislature's response to these requests was even more striking. Approximately 35 per cent of all bills introduced from 1921 to 1931 became statutes, whereas 69.09 per cent of legalizing bills were enacted into law during the same period. If legalizing bills were deducted from the total bills before computing the above percentages, an even greater difference would result. In general, a legalizing bill has almost twice as much prospect of becoming a law as has the average bill. The proportion of municipal legalizing bills enacted varied from 50 per cent in 1931 to 85.71 per cent in 1927. Although in particular sessions there was a considerable variation in the proportion of total legalizing bills and of municipal legalizing bills which became statutes, the averages for the six sessions were almost the same.

In brief, about five per cent of all bills introduced were requests for legalizing acts; over 40 per cent of legalizing bills dealt with municipalities; almost 70 per cent of the total legalizing bills introduced became law; and approximately 70 per cent of municipal legalizing bills became law. Finally, although municipal legalizing bills constituted only 2.11 per cent of all bills introduced during the period, they made up 4.36 per cent of the total legislative acts.

The proper interpretation of these statistics is somewhat uncertain. To the writer, it appears that both the absolute and the relative number of requests for curative legislation by Iowa municipalities is considerable, and that the high percentage of certainty that the requests will be granted is significant. Iowa cities appear to make numerous mistakes. They feel quite free to request legislative validation, and they should not entertain

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serious fear that the legislature will leave them to bear the burden of their errors.

Table II presents an analysis by subject matter of the 136 bills requesting legalizing acts for municipalities introduced between 1921 and 1932.

TABLE II. TYPE OF ERROR REMEDIED IN LEGALIZING BILLS

	Session of Legislature						
	1921	*1923*	*1925*	*1927*	*1929*	*1931*	*Total*
Issuing bonds or warrants	29	5	4	0	1	1	40
Transfer of municipal funds	2	1	2	15	9	0	29
Granting utility franchises	1	8	6	2	5	0	22
Irregularities in special elections	2	1	0	2	3	7	15
Election of municipal officers	0	3	0	0	0	1	4
Purchase or establishment of municipal utilities	0	1	0	1	1	1	4
Contracts or assessments for improvements	2	0	1	0	0	0	3
Appropriation from the wrong fund	0	0	2	0	1	0	3
Actions of park board	0	0	0	0	3	0	3
Procedure in enacting ordinances	0	1	0	0	1	0	2
Municipal plats	1	0	0	0	0	0	1
Tax levies	0	0	1	0	0	0	1
Amending ordinances	0	1	0	0	0	0	1
Purchase of culverts	0	0	1	0	0	0	1
Loss of city records	0	1	0	0	0	0	1
Purchase of fire equipment	1	0	0	0	0	0	1
Sale of light and power company	0	0	1	0	0	0	1
Proceedings of cemetery associations	1	0	0	0	0	0	1
Deed by city to American Legion post	0	0	0	1	0	0	1
Establishment of park board	0	0	0	0	1	0	1
Emergency tax levies under specified Code section	0	0	0	0	1	0	1
Total	39	22	18	21	26	10	136

The chief difficulty in classifying these bills on the basis of the type of error which it was sought to remedy is that they often describe the situation in very general terms. In fact, the form and phraseology of this type of legislation have become so stereotyped as to make it almost worthless as a source of information, especially in the three types of bills which appear with the greatest frequency—those relating to errors in issuing municipal bonds or warrants, in granting utility franchises, and in holding special elections. Very often a single bill seeks to legalize warrants issued from funds established by the proceeds of a bond issue, which issue came from a company possessing a municipal franchise, the franchise having been granted through a special election. Evidently the

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utility company simply sought a blanket validation of the entire process, and it is impossible to discover whether or not there was a real error and, if there was, in what part of the process it occurred. The first, third, and fourth types of bills appearing in Table II are thus closely related to each other in many cases, although occasionally the special election in which an error occurred was held on a subject other than the granting of a franchise, and frequently the bonds or warrants which a bill sought to legalize were issued by the city itself rather than by a utility corporation enfranchised by the city. It is probable, moreover, that the errors in the doubtful cases neutralize each other sufficiently to make the figures fairly dependable.

This source of uncertainty does not appear in bills which request validation for the transfer of surpluses from one municipal fund to another, nor in most of the other types of bills appearing in the table. The former always describe the transfer in specific terms, and the latter are too few in number and of too unusual a nature to have become formalized. The numerous requests during the sessions of 1927 and 1929 for legalizing acts of the former type (item two in the table) were caused by the rigidity of the state law dealing with such transfers. The transfers requested were almost always from a municipally operated utility fund (electric light or waterworks) to another fund which in the nature of the case could not be "making" money, but which had numerous uses for additional funds (for example, the street or poor relief fund). In the 1927 session, legislation was enacted making possible such transfers under stated conditions with the approval of the state director of the budget, and in 1929 an amendment made it possible for towns and cities of over five thousand population to make transfers of specified amounts without the consent of the budget director, upon the consent of three-fourths of the councilmen. This new legislation presumably accounts for the fact that no bills seeking to validate the transfer of municipal funds were introduced in the 1931 session. It also offers an excellent illustration of the effect upon the character and quantity of legislation produced by increasing the scope of municipal home rule.

The remaining thirty legalizing bills are of considerably less importance; they comprise requests for validation of errors of unclassifiable types concerning all phases of the business of the city.

The supreme court of Iowa has rendered decisions in approximately seventy cases involving legalizing acts, eight of them dealing with acts applying to municipalities. The first case,[1] in 1878, involved an act legalizing the establishment of a superior court in the city of Cedar Rapids. Since the supreme court was able to justify the creation of the court

[1] Lytle v. May, 49 Iowa 224 (1878).

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under the general statutes without ruling upon the validity of the subsequent legalizing act, the only important point in the present connection was the defendant's argument that the General Assembly, by the very act of legalizing courts organized under a previous act, expressed its own opinion that the previous act was unconstitutional. The court emphatically pointed out that the power to declare statutes unconstitutional by any method, direct or indirect, is not granted by the constitution to the legislative branch; it is a proper function of the judiciary only; a legalizing act cannot, therefore, be construed as a declaration of unconstitutionality by implication.

In 1883, two municipal legalizing acts were declared unconstitutional. In the first case,[2] the legality of a sewer tax of the city of Burlington was involved. Under a state law of 1876, the city levied on all property in the city a two-mill sewer tax (collected annually from 1876 through 1880) and used the proceeds to build the Valley Street sewer, completed in 1878. In the same year, the General Assembly enacted a statute providing that first-class cities "which have not commenced a general system of sewerage by the levy and expenditure of any tax therefor, under the provisions of" the act of 1876, might make provision for such system and pay the cost out of the general revenues of the city or assess the cost upon adjacent property. In 1880, Burlington adopted a general sewerage plan with the Valley Street sewer as a main artery draining a large part of the city, and another ordinance of the same year levied the cost of construction against the adjacent property. This ordinance the General Assembly legalized in 1882 by declaring it to be of the same force as if no sewer tax had been levied before the act of 1878.

The case came to the supreme court on the appeal of the plaintiff, a property owner adjacent to the Valley Street sewer. The court's opinion may be divided into two parts. In the first place, since the city had commenced a sewer system before 1878—and the facts established the use of the Valley Street sewer, constructed in 1876-78, as a main artery in such a system—both the letter and the spirit of the 1878 act prevented Burlington from acting under it. Its evident object was to prevent a change in the method of paying for such an improvement after the commencement of construction. The court further declared that the legalizing act of 1882 violated the constitutional prohibition against the enactment of local or special laws when a general law can be made applicable, by its indirect attempt to permit Burlington so to act. The Burlington ordinance was declared null and the legalizing act unconstitutional.

In the same year, a legalizing act affecting the city of Dubuque was

[2] Independent School District of Burlington v. City of Burlington, 60 Iowa 500 (1883).

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declared unconstitutional for the same reason—that it constituted special legislation.[3] The supreme court had held that the city had no power under its special charter to authorize occupancy of its streets by steam railroads,[4] but the ordinance involved had been legalized in 1880 by the General Assembly. The court now declared the legalizing act unconstitutional because "the power of the legislature to ratify a contract entered into by a municipal corporation for a public purpose, which is *ultra vires*, results from its power to have originally authorized the very contract to be made," and such an authorization would have violated the special legislation prohibition. Since the General Assembly could not by a special act have permitted Dubuque to enact the ordinance in question, it could not produce the same effect by legalizing the ordinance.

The fourth case[5] was one in which the supreme court upheld a municipal legalizing act involving alleged defects of procedure in certain paving assessments levied by the city of Clinton. The city enacted the ordinance under which the assessments were levied in 1891, and the legalizing act was not passed until 1894, after the case had been begun. The objection that the legalizing act was passed while the case was pending was overruled on the authority of earlier Iowa cases, and the court held the content of the legalizing act valid since it was within the power of the legislature to legalize defects in procedure if the defect or omission of compliance with the law were such that it might have been dispensed with by prior statute.

In 1893, Des Moines entered into a contract for paving part of Grand Avenue. Fifteen plaintiffs,[6] adjacent property owners, alleged that the method of granting the contract rendered it invalid, especially because of certain improper notices. The contractors, recognizing these errors, obtained from the General Assembly a legalizing act. No work under the contract was begun until after the securing of the act. The plaintiffs contended, in the first place, that the act was not within the general legislative power, because it legalized defective procedure before, rather than after, the procedure was carried out. In the Clinton case, the void contract was performed and later legalized. The court admitted that, equitably considered, there were differences between the two cases, but it did not believe that these differences invoked different rules for constitutional interpretation; the legislature had had the discretionary power to consider them, and presumably had done so. The second objection—that the legislature had violated the prohibition against special or local

[3] Stange *et al.* v. City of Dubuque, 62 Iowa 303 (1883).

[4] Strange v. Hill and West Dubuque Street Railway Company, 54 Iowa 669 (1879).

[5] City of Clinton v. Arnold Walliker *et al.*, Appellants, 98 Iowa 655 (1896).

[6] James H. Windsor *et al.* v. City of Des Moines and Des Moines Brick Manufacturing Company, Appellants, 101 Iowa 343 (1897).

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laws—was also denied. The legislature clearly could have produced the effect which resulted from the legalizing act by legislation prior to the making of the contract, and consequently it had the right to produce the effect by a retrospective statute. Furthermore, legalizing the contract before its execution was no more destructive of vested rights than legalizing it after execution. There might be certain reasons against the policy of prior legislation, but the court held that to be a matter for legislative, rather than for judicial, determination.

In 1900, Des Moines was again involved in litigation[7] relating to contracts (in this instance for an electric light plant) and a legalizing act validating the contracts. The contracts were let in 1897, and before work was begun under them, the plaintiff brought a suit in equity to cancel them. The tax levied to meet the obligation was alleged to be invalid because it was not authorized by a vote of the people, and because the resulting indebtedness exceeded the constitutional debt limitation. The trial court sustained the plaintiff; before the suit was finished on the defendant's appeal to the supreme court, the General Assembly passed an act legalizing the contracts.

Although the supreme court declared the contracts invalid, since the indebtedness incurred under them exceeded the constitutional debt limitation, it upheld the validity of the legalizing act. The fundamental rule was stated that a curative statute may legalize any act which the legislature could, as an original proposition, have authorized. Furthermore, the court found no objection in the fact that the act was passed during litigation involving the validity of the procedure which the act sought to legalize. Every case must be determined on the law "as it stands at the time judgment is pronounced," although the legislature cannot impair the obligation of a contract nor by subsequent legislation disturb vested rights. But bringing a suit vests no right in the particular decision, and the suit in equity under consideration by the court was triable *de novo* by that court, under the law as it stood at that particular time, even though it differed from the law under which the suit was originally brought.

The validity of a water rate schedule established by the city of Cedar Rapids in an ordinance, and of a legalizing act as it affected the ordinance, was the subject of the seventh case tried by the supreme court.[8] In 1875, Cedar Rapids granted by ordinance a twenty-five year franchise to the plaintiff. Under this ordinance, the city had no power to establish

[7] James H. Windsor v. City of Des Moines, McCaskey, and Holcomb Company, H. C. Murphy, Treasurer of Polk County *et al.*, Appellants, 110 Iowa 175 (1900).

[8] Cedar Rapids Water Company, Appellee, v. City of Cedar Rapids, Appellant, 118 Iowa 234 (1902).

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water rates. In 1876, the General Assembly passed an act legalizing the ordinance. In 1900, the city for the first time established by ordinance a rate schedule, supporting the schedule by the arguments that the rates were reasonable and that it had the power to establish rates, since the contract of 1875 had expired.

The chief question in the case involved the power of the legislature to extend the term of the original franchise by a legalizing act. When the franchise was granted in 1875, state law forbade franchise grants for more than twenty-five years. The franchise in question was, by its own terms, for this period, and it granted "an equal right thereafter with all others of supplying the city of Cedar Rapids with water." The court held that so much of this grant as attempted to carry beyond the twenty-five year period was clearly invalid and must be rejected, although the valid portion of the grant was readily separable from the invalid and could be retained.

The court denied that the legalizing act of 1876 prolonged the life of the franchise beyond the twenty-five years. If the legislature, in passing the original act limiting franchises to this period, had added a clause exempting Cedar Rapids, it clearly would have constituted a special law in a case where a general law could have been made applicable, and hence would have been unconstitutional. The legalizing act had exactly this effect, and was held unconstitutional as an indirect attempt to do what the legislature could not do directly.

The last case to be considered involved the validity both of a legalizing ordinance and of a legalizing statute dealing with paving assessments of the city of Keokuk.[9] The city declared that the defendant, a man owning property upon which the assessments in question had been levied, still owed the assessment plus interest and costs. Hornaday replied that the superior court of Keokuk in 1897 had finally rendered a decision in his favor in a case involving the validity of the same assessments which the city now again sought to collect. This the city admitted, but said that the assessments had been declared void because of irregularities in procedure, and that the General Assembly had subsequently legalized the entire proceeding and that Keokuk itself had enacted a legalizing ordinance of a similar nature. To this statement Hornaday replied that both the statute and the ordinance were invalid as an unauthorized interference with final judicial proceedings, constituting, in effect, an attempt to secure a new trial of an adjudicated issue by special legislation.

The supreme court declared the ordinance invalid and in a most in-

[9] E. P. McManus, Appellee, v. Calvin Hornaday, Appellant, 124 Iowa 267 (1904).

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teresting opinion established the invalidity of the statute. "While it is competent for the legislature to prescribe remedies and methods of procedure to be observed and applied by the courts, it is an elementary proposition of constitutional law that the judicial department of the government is, within its appropriate sphere, entirely independent of legislative interference, and the adjudication of a controversy between litigants having been once accomplished in due form of law, the legislature is without power by special act to nullify such adjudication and reopen the controversy for another trial." The court cited several parallel cases, differentiating between the effect of legalizing acts passed while adjudication was still pending and the situation in the case under discussion. It held that there was no necessity to consider the power of the legislature to legalize defects in tax procedure or to authorize reassessments. The only question related to a suit brought for recovery of a tax which had been duly and finally adjudged invalid, and the court held that "no legalizing statute subsequently enacted will operate to nullify the effect of that judgment."

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Forms of Municipal Government in Ohio. The constitution of Ohio divides all municipal corporations into two groups. All municipalities having over 5,000 inhabitants are cities; all having less than that number are villages. According to the 1930 census, there are 110 cities and 752 villages. For the governing of these municipalities, the constitution provides that "general laws shall be passed to provide for the incorporation and government of cities and villages; and additional laws may also be passed for the government of municipalities adopting the same; . . ." Also, "any municipality may frame and adopt or amend a charter for its government, . . ." In accordance with these provisions, the legislature has enacted a general law for cities and another for villages, and has provided three optional plans which any municipality may adopt by a popular vote.

The plan of government provided by the general law, under which all cities are organized unless they take action to adopt some other form, is an antiquated mayor-council plan. It burdens the electorate with a long ballot, divides the executive and administrative powers, and promotes competing leadership of legislative policy. Cities of under 25,000 inhabitants have a council of seven members, with three chosen at large; those of from 25,000 to 40,000 have two additional ward councilmen for each 15,000 population, to a maximum of 32 councilmen. A president of the council, a mayor, and the three principal administrative officers—auditor, treasurer, and solicitor—are chosen by the entire electorate, in all

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cases for two years. The only important appointive offices filled by the mayor are the service director and the safety director.

Seventy-eight, or over 70 per cent, of the cities in the state report that they are organized under this general, or standard, plan of government. Forty-three, or about 55 per cent, are cities of under 10,000 and another 24, or nearly 31 per cent, are between 10,000 and 25,000. Only ten cities of over 25,000, and only one of over 50,000 (Canton), operate under the general law. The great majority are thus, as one would expect, small cities. In such places, the short ballot and the centralization of responsibility are not as imperative as in the larger city; the pressure of increased cost of government has not been such as to force popular reconsideration of forms of government; besides, the general plan is the one which automatically applies to all cities that do not take steps either to adopt one of the optional plans or to draft a charter of their own.

In addition to the general law, three optional plans of government are set forth in the statutes, any one of which may be adopted by any city or village by a popular vote initiated by a petition of ten per cent of the qualified electors. One of these plans is a mayor-council form of government, with more centralization of the administrative power than in the plan under the general law. This is known as the federal plan. When adopting this plan, the voters have the option of providing for choice of the council either at large or by wards. If elected at large, the council varies in size from five to nine according to the population of the city, and the members are chosen for four-year terms with a majority or minority of the council elected every two years. If the council is elected from wards, the size varies from five to fifteen in accordance with the population, and election is for two-year terms. The mayor is elected for four years. The executive and administrative powers are vested in him; he appoints and removes all department heads except the auditor, who is appointed by the council. He may sit in all council meetings, although he has no vote. He may veto measures of the council, and a veto can be over-ridden only by a two-thirds vote. This plan does not have the many weaknesses of the one provided under the general law. Nevertheless, not a single city is operating under it.

Another of the three optional plans provided by the statutes is known as the commission plan. Cities of under 10,000 select three councilmen and cities of over 10,000 select five at large for a term of four years, a part of the commission being elected every two years. All administrative officers are appointed by the commission. There are also no cities operating under this plan.

Finally, the optional laws provide a council-manager plan. A council of five for cities of under 10,000, of seven for cities of between 10,000 and 25,000, and of nine for cities of over 25,000, is chosen at large for

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four years, with a majority or a minority elected each biennium. The administrative authority is not centralized in the hands of the manager as completely as in most manager plans. The council appoints the civil service commission, all boards or commissioners created by ordinance, and a clerk, treasurer, auditor, and solicitor. Furthermore, the council may appoint, or provide for the appointment of, all officers and employees of the municipality, and it may remove any officer or employee by a majority vote; and by ordinance it may change the compensation of officers and employees. All appointments that may be left to the manager require the approval of the council. These provisions of the law make it a much less desirable plan of government than the usual centralized city-manager plan. This law was originally passed by the legislature in 1913, when city manager government was in its infancy, and it has been changed but little since. Only three cities have adopted this optional plan. Ironton and Painesville, in the 10,000 to 25,000 group, adopted the plan in 1930 and 1920, respectively, and Oakwood, one of the new cities under the 1930 census, organized under the plan on January 1, 1932.

Thus, although the three optional plans have been on the statute books for almost twenty years, only three cities are now using any one of them. One possible explanation for their lack of popularity is a provision in the statutes which forbids the abandonment of one of the plans, once adopted, until the city has operated thereunder for five years. Furthermore, when a city determines to take any special action, it can with little more trouble draft a home-rule charter.

Twenty-nine cities have now adopted home-rule charters, including 11 of the 12 cities of over 50,000, five of the 14 cities of between 25,000 and 50,000, six of the 33 cities of between 10,000 and 25,000, and seven cities of under 10,000. Dividing the cities into two groups, over 61 per cent of the cities of over 25,000 have exercised their right of home rule, while only about 16 per cent of those under 25,000 have availed themselves of the same opportunity.

An analysis of the home-rule charters shows that 15 of the 29 provide for the manager plan and 14 provide for a type of the mayor-council plan. Middletown, one of the 15 council-manager cities, has a commission charter, but the council has arranged by ordinance for a manager. Since the result is in fact a council-manager plan, and is so considered by the International City Managers' Association, Middletown is listed with the council-manager cities. Also, Cleveland in the election of November 3, 1931, abandoned the city-manager plan for a mayor-council government. By population groups, five of the seven home-rule cities of over 100,000 operate under mayor-council government; one of the four between 50,000 and 100,000; one of five in the 25,000 to 50,000 group; two of the six in the 5,000 to 10,000 group. Thus, cities at the two extremes of the

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population groups make the greatest use of the mayor-council plan, being 71 per cent of each of these groups. The city-manager plan is used more than the mayor-council plan by cities of from 10,000 to 100,000; 73 per cent of the home-rule cities of this population group have council-manager government.

Under the 1930 census, 19 villages have become cities. After January 1, 1932, each became organized under one of the forms of government provided for cities. They are included in the above statistics, but their separate consideration should show the present tendency of the smaller cities. Thirteen of the 19, or 68 per cent, organized under the general law. This compares with 82 per cent for all cities of the same population group. One adopted the optional city-manager plan. Five adopted home-rule charters, of which one provided for a council-manager government and four for mayor-council governments. Compared with the respective numbers for all cities of the same size, this tends to show a growing preference for the mayor-council plan; and the conclusion is bolstered by the fact that at least three of the cities organized under the general law rejected home-rule charters sponsoring council-manager plans. However, two of these rejections and all of the five cities adopting home-rule charters were in the Cleveland metropolitan area, where popular sentiment at the moment appears antagonistic to the council-manager plan.

If any conclusions are to be drawn from the facts here presented, it is evident that the general law of Ohio governing cities should be revised. With almost three-fourths of the cities of the state operating under the general law, it is important that they be governed by a system that is more in accord with present-day knowledge of municipal organization and administration. The writer would prefer an up-to-date council-manager government; but a mayor-council system, with proper attention given to administration, would be an excellent improvement upon the present law.

The optional charter plans could be improved. They should be so drafted as to be adapted to serve as models for cities drafting their own charters. And there is little reason for placing a premium on the adoption of an optional plan. Inasmuch as a city may draft new charters as frequently as it desires, it should not be limited in its right to abandon an optional plan.

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The Metropolitan Water District of Southern California. This district was formed and incorporated under the Metropolitan Water District Act of 1929. It is composed of fifteen cities in the South Coastal Plain, namely, Anaheim, Beverly Hills, Colton, Pasadena, Santa Ana, Santa

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Monica, San Marino, Los Angeles, Fullerton, Torrance, Long Beach, Glendale, Compton, Burbank, and San Bernardino. Riverside and Ontario are considering entering. Any other city in the area may join by a majority vote of its citizens and consent of the cities already in the district.

For a time, the district functioned through the organization of the Los Angeles water department. As soon as funds and equipment became available it, however, separated and formed its own organization (May 1, 1930). It is now governed by a board of directors, one member from each city, with an additional director for each two hundred million of assessed valuation. Voting power is distributed on the basis of every ten million of assessed valuation. The fact that a city has more than one director does not give it increased voting power. No city is allowed more than fifty per cent of the voting strength of the board.[1] In accordance with these rules, the city of Los Angeles appoints five directors and each of the other cities one. The chairman, vice-chairman, secretary, and assistant secretary are elected from the directors. The controller, treasurer, and executive secretary are salaried appointees. The board also appoints a chief engineer.[2]

Under the California statutes, the district "may incur bonded debts and may acquire, construct, operate, and manage works and property, providing for the taxation of property therein and the performance of certain other functions relating thereto, by officers of counties, providing for the addition of area thereto and the exclusion of area therefrom, and authorizing municipal corporations to aid and participate in the incorporation of such districts."[3] Counties are authorized and required to levy a tax on the various cities as specified by resolution of the board of directors, modified to the extent necessary to produce from each city only the amount of money apportioned thereto in said resolution, less any amount paid or undertaken to be paid by such city or credited thereto. The tax applies to all taxable non-operative property in the district.[4]

The present tax rate of the Metropolitan District in Los Angeles county is three cents per hundred dollars.[5] The ten cities of Los Angeles county that are in the district represent 75 per cent of the assessed valuation of the entire county and 98.36 per cent of the valuation of the Metropolitan District. Without doubt, Los Angeles county will bear the brunt of the bonding, both as to interest and principal, at least until the water reaches full distribution and sale.[6]

[1] *Surveys of the Metropolitan District of Southern California,* pp. 1-10 (January, 1931).

[2] *Surveys of Metropolitan Water District* (January, 1931).

[3] *California Statutes, 1929,* Chap. 796.

[4] *Ibid.,* Section 8, Subdivision K.

[5] *County of Los Angeles Taxpayers' Guide, 1931.*

[6] Los Angeles Bureau of Municipal Research (September, 1931).

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The primary object of the Metropolitan District is to construct an aqueduct to take water from the Colorado River, 252 miles away. The river dumps between five and nine billion gallons of water a day, of which one billion gallons will be saved for the South Coastal Plain by the federal-built Boulder Dam. This dam, approximately 300 miles from Los Angeles, will back up water nearly a hundred miles. The rapid construction of the dam will insure its completion long before the aqueduct can be built. The latter will necessitate a construction period of eight to ten years.

The Metropolitan District has made some very valuable surveys in connection with the water problems of its area. Several dam-sites on the Colorado River were selected, and the best one was determined by a detailed survey of the aqueduct routes and the comparative costs and advantages thereof. The Parker site was selected, after consideration of Bull's Head, Bridge Canyon, and Picacho sites.

Other surveys by state engineers have shown that the cities of the South Coastal Plain use one hundred and seventy million gallons of water a day more than is being replaced. This is borne out by the fact that wells, formerly artesian, are now being pumped at depths ranging from 120 to 600 feet. In many places the pumping is below sea level, which has resulted in salt water invading and spoiling fresh water basins.

In influencing the federal government to build the dam where and as promptly as it is being done, the Metropolitan District has incurred some political obligations. It has entered into a contract whereby the government will store and deliver Colorado River water to the South Coastal Plain; also a contract for the purchase of electric power from the dam to pump the water over intervening mountains.

The Metropolitan Water District has provided a two hundred and twenty million dollar Colorado River bond issue, which was carried in late 1931 by a large majority vote. The bonds are fifty-year term, four and three quarters per cent interest, and cost the District two dollars and twenty-one cents per borrowed dollar. The total payment will be $486,500,000, or $9,730,000 a year. More bonding will probably be necessary in the future; for present estimates bring the aqueduct to the area, but do not distribute the water. These arrangements must be made locally. Possibly several special water improvement districts will be formed.[7] At the present time, there are three water districts and eleven waterworks districts in Los Angeles county besides the Metropolitan District.[8]

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[7] Los Angeles Bureau of Municipal Research (September, 1931).

[8] *County Auditor's Report, 1931.*

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Recent Elections in Prussia and Other German Länder. Since the reëlection of President von Hindenburg on April 10, eight German Länder have held parliamentary elections. Five, i.e., Prussia, Bavaria, Württemberg, Hamburg, and Anhalt, held Landtag elections on April 24; Mecklenburg-Schwerin elected a new parliament on May 4; Oldenburg reconstituted its legislative body on May 29; and on June 19 the voters of Hessen went to the polls (for the fourth time in seven months) to replace the Landtag elected on November 14 and subsequently declared illegal by the courts. These eight Länder comprise eighty-three per cent of the population of Germany, and the elections enumerated have brought into clear relief present political tendencies throughout the country: the rapidly growing strength of National Socialism; the increasing dissatisfaction with Socialistic attempts to overcome the economic crisis; the progressive disappearance of the middle parties, with the exception of the Catholic Center; and the relatively slow growth of Communistic influence. The table on the following page undertakes to present the results of the elections and to show the political status in the seventeen German Länder as it is today.

Of the several Landtag elections, that of Prussia was the most important. Prussia not only has over sixty-one per cent of the population of Germany, but has twenty-six of the sixty-six members of the German Reichsrat, and for these and other reasons plays a decisive rôle in the affairs of the Reich generally. Regular Prussian elections are held once every four years. Electors vote, not for individual candidates, but for lists of candidates nominated by the various eligible parties and groups, nineteen of which placed lists in the field on April 24.[1] For election purposes, Prussia is divided into twenty-three major election districts, and each party or group is entitled to one representative in the Landtag for every 50,000 votes that it receives in such an election district.[2] Surplus remainders in the various districts are pooled, and each party secures an additional representative for every 50,000 votes in its pool. At the time of this election, the party distribution of representatives in the Prussian Landtag was as follows: Communists, 48; Social

[1] Besides the more important parties were such groups as the Partei der Erwerbslosen, Menschheitspartei, Radikale Partei, Nationale Minderheiten in Deutschland, and the Nationale Opposition der Vereinigten Reichsbankläubiger. Of the 22,069,849 votes cast, representing 81 per cent of the qualified voters, five parties—National Socialists, Social Democrats, Center, Communists, and German Nationalists—polled 93 per cent.

[2] This figure in former elections was 40,000. For provisions dealing with Prussian Landtag elections, see Verfassung des Freistaats Preussen, November 30, 1920, and the Landeswahlgesetz of December 3, 1920, with supplements.

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POLITICAL CHARACTER OF LÄNDER GOVERNMENTS, JUNE 13, 1932

Länder	*Date of last election*	*Party strength in Landtag** (a)*	*(b)*	*(c)*	*(d)*	*(e)*	*(f)*	*Character** of executive*
Preussen	24. 4.32	57	93	67	31	162	12	administrative
Bayern	24. 4.32	8	20	45†	3	43	9	administrative
Sachsen	22. 6.30	13	32	0	5	14	32	administrative
Württemberg	24. 4.32	7	14	17	3	23	16	administrative
Baden	27.10.29	5	18	34	3	6	22	administrative
Thüringen	8.12.29	6	18	0	2	6	21	administrative
Hessen	14.11.31							
(declared invalid—new election 19.6.32)								administrative
Hamburg	24. 4.32	26	49	2	7	51	25	administrative
Mecklenburg-Schwerin	5. 6.32	4	18	0	5	30	2	Nat. Soc.-Ger. Nat.
Oldenburg	29. 5.32	2	9	7	2	24	2	Nat. Soc.
Braunschweig	14. 9.30	2	17	0	0	9	12	Nat. Soc.-Ger. Nat.
Anhalt	24. 4.32	3	12	1	2	15	4	Nat. Soc.
Bremen	30.11.30	12	40	2	6	32	28	Weimar coalition
Lippe	6. 1.29	1	9	0	3	0	8	Weimar coalition
Lübeck	10.11.29	7	34	1	0	6	32	Weimar coalition
Mecklenburg-Strelitz	13. 3.32	3	10	0	11	9	2	Nat. Soc.-Dt. Nat.
Schaumburg-Lippe	3. 5.31	1	7	0	1	4	2	Weimar coalition
Total Landtag representation.		157	400	176	84	434	229	

* The parties are arranged as follows: (a) Communists; (b) Social Democrats; (c) Center party; (d) German Nationalists; (e) National Socialists; (f) Other parties.

** In many of the Länder, the functioning of the normal parliamentary system has been interrupted and the work of the executive branch is being carried on by the administrative heads of departments, with the toleration or support of some parties. In five cases, the cabinets are in control of the National Socialists, with or without the coöperation of the German Nationalists. In four of the smaller Länder, the Weimar coalition—Social Democrats, Democrats, Center, and some other middle parties—still controls the cabinet.

† The Bavarian Peoples party, Catholic and coöperating closely with the Center party.

Democrats, 137; Democrats, 22; Center, 71; Peoples party, 40; Economic party, 16; German Nationalists, 71; National Socialists, 9; other parties, 36.[8] The increase of National Socialistic strength from 9 to 162, the reduction of Social Democratic and German National representation by 44 and 40 members, respectively, and the almost total disappearance of the other parties (with the exception of the Communists and the Center party) are facts which need little elaboration. The election evidenced a revolution in political thinking.

[8] *Frankfurter Zeitung*, April 26, 1932, p. 5.

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According to information published on April 6, 1932, about 7,000 candidates were put forward by the various parties and groups in Prussia alone, and an additional 3,000 in Bavaria, Württemberg, Anhalt, and Hamburg. In selecting candidates for their local and state-wide lists, the parties use different methods. In some cases, nominations are made by assemblies composed of parliamentary factions and party officials; in some cases, by executive committees; and sometimes they are merely appointed by the party leaders. The National Socialist candidates are as a rule appointed by the district leaders of the party and passed upon by the national officials, who take into consideration the devotion of the candidates to the party, their political experience, and their capacity to win votes, as well as their general ability.[4] The Social Democratic candidates are to a very large extent executive secretaries of trade unions, party officials, or members of the party holding public office.[5] Prominent figures in the party are usually placed near the top of the state-wide lists in order to insure their election. In view of the character and composition of the extreme parties of the Right and Left—National Socialists and Communists—it is not surprising that a large proportion of the nominees of these parties are comparatively young.[6]

The military and organizational traditions in Germany have been carried over into the party life of the nation, giving political struggles the character of a warfare between skillfully manned and thoroughly disciplined forces. It is sometimes said that one-tenth of the voting strength of the parties can be taken as a rough measure of the regimented nucleus of permanently organized members, whose dues constitute the starting point of the party war-chest, and whose votes can be assuredly counted upon. In addition to the financial and voting strength of dues-paying members, the parties also rely for support upon a number of organizations more or less closely affiliated with them. Behind the Communist party there are today a small number of trade unions and a semi-military organization called the Rote Front, designed to give the party whatever physical protection it needs. The sources of financial support, whether dues, sale of literature, admission fees for mass meetings, or contributions from outside of Germany, are in the nature of things secret.

[4] On the state-wide list of the National Socialists there were the names of 24 active civil servants and 14 pensioned public officials, 10 of whom were former army officers. In both district and state-wide lists, about 25 per cent of the candidates were agriculturists. *Frankfurter Zeitung*, April 8, 1932.

[5] The Social Democratic state-wide list, for example, contained the names of 24 candidates, seven of whom were holding public office, twelve others being executive secretaries or officials of trade union or party organizations.

[6] Data concerning the ages of candidates in the Landtag elections are not available. Of 184 National Socialists and Communists elected to the Reichstag in 1930, 20 were under thirty and 104 were between thirty and forty.

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The backbone of the Social Democratic party is the so-called free trade unions, whose principal organization is the Allgemeiner Deutscher Gewerkschaftsbund, with 4,866,926 members. In addition, there is the semi-military organization known as the Reichsbanner, organized to protect the interests of the Socialists against the attacks of the Communists and National Socialists, as well as to protect the republican institutions set up by the Weimar constitution. The Social Democratic party derives financial support from membership dues, trade union contributions, entrance fees to mass meetings, sale of publications, and, in the recent elections, a ten per cent levy on the salaries of party employees and officials. In addition to the Catholic trade unions and the Deutscher Gewerkschaftsbund, the Center party has, of course, the organized support, politically and financially, of the Catholic Church and a large number of associated federations. While such support may not always be direct, it is none the less effective. The Stahlhelm—an organization of nationally-inclined military interests and war veterans—usually works in close harmony with the German Nationalists, although it cannot be said to be officially connected with the party. The Landbund, an organization of agricultural interests with more than 5,000,000 members, is also found as a rule supporting the interests of the Right parties, the German Nationalists or the National Socialists. The National Socialists derive their organized support from a number of sources—unemployed workers, middle classes, agriculturists, and a certain proportion of the industrial interests.[7] In addition to a regular dues-paying membership of about 1,000,000, they have a semi-military organization known as the S.A. (Sturm Abteilung) of about 400,000 members. Financial support for the Hitler movement is derived in part from dues, entrance fees to mass meetings (which are of considerable significance), and the sale of publications. Charges that the movement is heavily endowed by certain industrial interests, and even that it receives financial support from the Italian Fascists, as well as the landed interests of eastern Germany, have from time to time been denied. In recent years, a number of industrial and business federations have played an important rôle in political campaigns, as for example member organizations of the Reichsverband der Deutschen Industrie and the Vereinigung der Deutschen Arbeitgeberverbände, although the national federations themselves claim to be non-political. The Deutsche Beamtenbund,[8] with its millions of civil servants, has not

[7] It is known, for example, that certain industrial organizations in western Germany are quite definitely represented by National Socialists on the board of directors and secretarial staff of the Reichverband der Deutschen Industrie, although it would not be fair to state that this organization is officially National Socialist.

[8] It has happened that such organizations as the Deutsche Beamtenbund have made contributions to party war-chests with the understanding that certain nominees would be given advantageous positions on the party lists.

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hesitated in recent times to enter the political arena, although it cannot be said to represent officially any one political party. The disciplined character of these organizations and their inclusive memberships, as well as their financial strength, are often decisive factors in political campaigns.

One of the most dramatic events of the Prussian Landtag campaign was the issuance of a national decree by President von Hindenburg forbidding the existence and activity of the S.A. and other semi-military organizations associated with the Hitler movement.[9] This action, which was recommended by the Brüning cabinet, was apparently carried out with dispatch and with comparatively little difficulty. Although the National Socialists claimed that it was merely a political move on the part of the Social Democrats and their associates, they adopted an attitude of "passive resistance," and it is quite evident that thousands of votes were added to their lists as a result of the action. The decree was later supplemented by a pronouncement of President von Hindenburg calling for an investigation of other "party armies," but nothing seems to have come of the suggestion.[10] This action of the Brüning cabinet was severely criticized, not only by the National Socialists, but by other groups as well. The limitation of Germany's national army to 100,000 men by the peace treaties has been a factor in encouraging the introduction of what some describe as "boot-leg" militarism into Germany. The military tradition has never been entirely exterminated, even within the ranks of some of the middle and left groupings, and has found a partially stunted expression in the setting up of these "party armies," a development which has been made easier because of large numbers of unemployed, the unsettled economic conditions, and the intensity of the political battles raging since the war.

An examination of the results of the Landtag elections in the seven Länder reveals the critical situation into which Germany has been forced by the trend of events during the last few years. An increase in strength of the National Socialists was the outstanding feature in all of them, though in most cases it was not sufficient to make possible a National Socialistic majority government. In three of the smaller Länder—Mecklenburg-Schwerin, Oldenburg, and Anhalt—it was possible for the National Socialists, either alone or with the help of the German National-

[9] Decree of April 13, 1932.

[10] Letter of President Hindenburg to Secretary of the Interior Groener, April 15. The opposition of certain army officials and military interests to the dissolution of the S.A. finally led to the resignation of Groener from his post as head of the Department of the Interior.

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ists, to form a cabinet. In the four larger Länder, however—Prussia, Bavaria, Württemberg, and Hamburg—this was not possible. The complexity of the situation is well brought out by the sequence of events in Prussia, whose parliamentary situation may be said to be fairly typical of that in the Reich as a whole.

The election in Prussia gave the following results: Communists, 57; Social Democrats, 93; Center, 67; German Nationalists, 31; National Socialists, 162; other parties, 12. The attitude of the Communists is at least consistent; they will support no cabinet founded on the present constitutional system, and can be counted upon to vote with the opposition at all times. The former Weimar coalition made up of the Social Democrats, Center, and other middle parties can command possibly 172 votes, but will be opposed by 250 Communists, German Nationalists, and National Socialists. Moreover, a combination of National Socialists and German Nationalists would give only 193 as against an opposition of 229. There is, of course, still another possibility—a cabinet composed of members of the Center, German Nationalists, and National Socialists. To the date of writing (June 15), attempts to bring about a coalition of these three parties have failed in all of the Länder; and this failure accounts for the fact that in a large proportion of them parliamentary government has been supplanted by a more or less temporary arrangement according to which routine business is carried on by the permanent civil services and the normal parliamentary situation is for the time being suspended.

In order to answer the question of why it has been impossible for the Center party to enter a coalition government with the National Socialists, one must go to the very heart of the political situation in Germany today, which is not only a political, but also an economic and religious problem. The National Socialist program, so far as it can be understood, purposes a revolutionary transformation in the political and economic structure of the state, which, if carried out, would undoubtedly undermine the influence of the Catholic Church, both as a state and as an international organization functioning within Germany. The emphasis of the National Socialists on national self-sufficiency (*Autarkie*) and independence from external control is seen as a danger to the key position which the Center party has held since the war. Furthermore, this party, supported by the Catholic trade unions and tolerated by the Socialists in their support of the Weimar constitution, cannot see its way clear to playing second fiddle in a governmental coalition which it feels would ultimately mean the destruction of these trade unions as such and inaugurate a policy quite out of keeping with that of the Weimar coalition

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since the war. After all, Brüning was once executive secretary of a powerful trade union organization, the Deutsche Gewerkschaftsbund. On the other hand, a coalition of Catholics and Socialists was possible so long as the Socialists were willing to accept the material advantages of the arrangement and leave to the Center party the key position of control. Apparently, a combination of Catholics and National Socialists could be consummated only on the condition that the National Socialists relinquish a substantial proportion of their nationalism and socialism or on the basis that the Center party relinquish a large share of its political hegemony.

And so the situation stands today. The political groupings remain deadlocked, and the various Länder governments are muddling along, waiting for something to happen that will break the deadlock. The newly elected Prussian Landtag came together for its first session on May 24, and succeeded in electing a temporary president from the ranks of the National Socialists, but finally adjourned after a tumultuous affray between members of the National Socialist and Communist parties on the following day. A three-day session from June 1 to June 3 resulted in many political speeches, but total failure to agree upon a formula of cabinet-building. The recent elections in the Länder had shown quite clearly that the distribution of party strength in the Reichstag failed to reflect the distribution of party strength in the country, and in an endeavor to remedy this situation as soon as possible, President von Hindenburg brought about the resignation of the Brüning cabinet on May 30 and replaced it by a cabinet headed by von Papen, technically a member of the Center party but without its official support.[11] Inasmuch as it was quite evident that this cabinet could not possibly secure the support of the existing Reichstag, it seemed desirable to dissolve the body without further delay. This was done by presidential proclamation on June 4, and the date of the new election was set for July 31.

The action of President von Hindenburg in bringing about a sudden change in the national cabinet, while undoubtedly a surprise, and even a disappointment to some who were unsympathetic with the trend of public opinion in present-day Germany, may properly be regarded as a logical step in the democratic attempt to bring government into touch with public opinion. The Länder elections showed very clearly that the

[11] This so-called "National-Concentration" cabinet reflects, in general, the prewar, military, agrarian, and industrial interests which are now to be found in the German Nationalist, and to a certain extent in the National Socialist, party. In a speech before the German Reichsrat on June 9, the minister of interior (Gayl) stated that he considered monarchy the best form of government for Germany, but that a constitutional reform at present would not be timely. *Frankfurter Zeitung*, June 10, 1932, p. 1.

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coalition of middle parties made up primarily of Centrists and Social Democrats no longer commanded the support of this public opinion. That public opinion in Germany, motivated by the critical experiences of the past few years, is becoming more and more nationalistic, and possibly somewhat radical, is certainly no fault of the democratic system as such. The problem that Germany is facing today—how to reconcile the conflicting interests of groups so divided in strength that none of them singly or in combination can command the support of a majority of the voters—is a problem with which any country must wrestle. The only rational and peaceful solution, under such a system of government, is to wait patiently for the coming into existence of such majority support. Until then, the burden of carrying on the day-to-day affairs of a state must of necessity fall, as it has done in Germany, upon the executive branch of the government. That the difficulty of reconciling conflicting interests has often resulted in civil war and physical strife is no reason for supposing that such eventualities are to be expected in Germany. It it more likely that the political thinking of the German people will finally crystallize in such a form as to make possible a rational solution of the problem.

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Federal Aid in Australia.* The Australian scheme of federal aid includes two types of federal assistance to states: (1) direct financial assistance, and (2) indirect assistance through state-federal arrangements. Similarities between the schemes of the United States and Australia appear in the first type of federal aid. In the second type, however, the Australian system assumes its distinctive characteristics and makes an advance over its American prototype.

Direct Financial Assistance to States. Tariff and Surplus Revenue. As a palliative to offset financial disabilities resulting from federation (1901), states were allowed to alter and regulate tariffs on interstate and foreign imports for a period of two years.[1] Under this arrangement, levying of customs duties was a state function and collection a federal function. States were to receive assistance from tariff revenue through constitutional provisions granting them monthly payments of surplus revenue. The fundamental law required a return to the states of three-fourths of the net federal revenues from levies of customs and excise.[2] Until 1910, revenue was returned to states in proportion to their respective popula-

* Research Paper No. 283 (unpublished), Journal Series, University of Arkansas.

[1] Const., Sec. 89. Thereafter control of customs and excise became an exclusive Commonwealth function.

[2] *Ibid.*, Sec. 87.

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tions.[3] Between 1910 and 1927, states received surplus revenue in monthly installments amounting to twenty-five shillings per capita of their population, and, in addition, all surplus revenue in proportion to their population.[4] State receipts under this arrangement were negligible, however, on account of heavy Commonwealth appropriations to trust funds.

Outright Grants to States. Unlike the Constitution of the United States, the Australian document specifically authorizes financial assistance to states. Section 96 declares that "during a period of ten years after the establishment of the Commonwealth, and thereafter until Parliament otherwise provides, the Parliament may grant financial assistance to any state on such terms and conditions as Parliament thinks fit." Under this blanket clause, several outright grants to states have been made with absolutely no federal control over disposition of the funds. Between 1912 and 1931, Tasmania received approximately £3,000,000 through seven different grant acts.

The general scheme of grants to states was slightly modified by the States Grants Act of 1927.[5] This measure ordered payment of a set sum (for the year 1927) to each state, and also promised states any surplus revenue in the federal treasury at the end of the fiscal year beginning in 1927 and each year thereafter, payable in proportion to their population. Under this arrangement, states received a set sum as follows: New South Wales, £2,978,343; Victoria, £2,152,615; Queensland, £1,131,646; South Australia, £721,269; Tasmania, £483,730; and Western Australia, £267,367. In addition to these grants, the 1927 act rendered special assistance to Tasmania and Western Australia. The former received £378,000 annually for a period of two years, and the latter was granted £300,000 annually for a period of five years.[6]

Determination of the precise amounts allotable to states under various grant acts followed no definite principle. As a matter of fact, states solicited this assistance on grounds of inability independently to carry out their reserved powers under the Constitution, such as health administration, education and development, and the maintenance of public credit.[7] The adverse effect of Commonwealth tariff policies on state revenues was also advanced as legitimate grounds for federal aid of this type.

Federal-Aid Roads. Administration of the Australian federal aid roads program closely follows principles laid down in the corresponding system

[3] *Ibid.*, Sec. 93, and Surplus Revenue Act, 1908. [4] Surplus Revenue Act, 1910.

[5] This act repealed the per capita provision of the 1910 act.

[6] The Western Australia payments terminated in 1931, since the act authorized payments to be started as of 1926.

[7] *Report of the Royal Commission on the Constitution of the Commonwealth* (1929), p. 202.

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of the United States. This branch of federal aid alone requires definite state contributions to meet those of the federal government.

The practice of providing federal funds for highway purposes was started in 1923. In that year, the Commonwealth offered states £500,000 for building main roads, increasing the subvention to double the amount in the following year. Federal contributions were matched by the states until enactment of the Federal Aid Roads Act of 1926. This act awarded states a total of £2,000,000 annually for a period of ten years, to provide construction and reconstruction of roads used in connection with interstate trade and commerce.[8] In the form of an agreement between states and Commonwealth, all states voluntarily accepted and passed supporting legislation.

According to the schedule, amounts payable are determined by a ratio of population and area in the proportion of three-fifths population and two-fifths area, with states contributing to the general fund at the rate of fifteen shillings for each pound sterling paid by the Commonwealth. The source of state money for the purpose is partially determined by the Commonwealth, since it is established that a fixed sum must be provided from revenue and the balance according to state determination. Other pertinent features of the agreement are: roads warranting assistance are selected by Commonwealth officials; surveys are conducted by and at the expense of states; projects must be executed by contract, except in special cases approved by the Commonwealth minister; payment of money to states is withheld until completion of the roads; all surveys and supervision in connection with construction must be undertaken by states; and every road constructed or reconstructed under the agreement must be maintained by the state to the satisfaction of the Commonwealth minister, with continuance of payment dependent thereupon. A federal aid roads board, composed of the Commonwealth minister of public works and one minister from each state, considers any matters connected with execution of the works.

Education. In the Dominion, as in the United States, control of educational matters is primarily a state function. The Commonwealth, nevertheless, has fostered education and research, chiefly by making available financial assistance to certain state institutions. Aid has been granted to the University of Sydney for a department of Oriental studies and anthropology, and for the establishment of a school of public health and tropical medicine; and the University of Melbourne has received assistance for the study of aërodynamics. Since the Commonwealth does not have a

[8] Proposals curtailing this program were to be submitted to the 1931 session of the Commonwealth parliament.

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department of education, or even an office of education, it is evident that the federal educational program falls short of that in the United States.

Indirect Assistance Through State-Federal Arrangements. Public Finance. The federal government indirectly renders states substantial assistance through a number of coöperative state-federal arrangements. As a result of agreements between parties to the federal compact, the Commonwealth has placed at the disposal of states significant aids in the field of public finance.

In the realm of taxation, two types of tax-administration agreements, developed within the last decade, provide possibility of greater economy for both states and Commonwealth. Under an agreement which became effective in 1921, all Western Australian taxes are collected by the Commonwealth for a sum agreed upon by tax commissioners of both authorities. Besides the possible savings in aggregate cost of tax collection through amalgamated departments, the scheme tends to produce uniformity of tax laws and interpretation. Individuals benefit by a less cumbersome and more convenient system, and states benefit by being spared the full support of a separate administrative department. Terms of the second type of agreement (1923) between remaining states and the Commonwealth permit state tax officers to collect the Commonwealth income tax, receiving suitable compensation for the work.[9]

State-owned banks are also beneficiaries of federal assistance, available through the savings bank division of the Commonwealth Bank, which has completely taken over several state savings banks for purposes of administration. By law, this central bank is authorized to enter into arrangements with any state savings bank for transfer to the Commonwealth Savings Bank of the whole or part of its assets, liabilities, and business. Since 1913 and 1920, the savings banks of Tasmania and Queensland, respectively, have been administered as parts of the Commonwealth Bank. Subsequent to last year's debt repudiation fright in New South Wales, that state became a recipient of similar aid.

The federal government has further simplified state financial problems by providing Commonwealth loans to states and by securing state loans from abroad. Primarily to meet war expenses, but without prescribing the specific use of moneys obtained, the Commonwealth procured six loans for states between 1916 and 1927. State loan acts of 1916, 1917, and 1924 made available an aggregate of not more than £17,240,000, whereas subsequent acts of 1925, 1926, and 1927 made available amounts agreed upon by state and Commonwealth governments. In 1925, the Commonwealth volunteered to procure loans from the British government for states, to be used in opening up land for settlement and assisting in

[9] *Official Commonwealth Yearbook*, No. 20 (1927), p. 354

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public works. For those purposes, a total of £34,000,000 became available.[10] Under a Wire and Wire Netting Act of 1927, states might receive Commonwealth loans in undetermined sums for the purpose of supplying settlers with wire and wire netting.[11]

A more important and more permanent form of financial aid to the states presents itself in connection with the Australian Loan Council, established for a fifty-eight-year period by the Financial Agreement Validation Act of 1929, embodying a state-federal agreement.[12] In accordance with this agreement, the Commonwealth, through the Loan Council, assumed state debts amounting to £672,120,415. Payment of interest on these debts remains a state obligation, but the federal government lightens the interest burden by annual subsidies amounting to £7,584,912. Furthermore, all states and the Commonwealth are required to make contributions toward sinking funds for the redemption of past and future loans. Finally, under provisions governing operation of the Loan Council, the Commonwealth now controls both internal and external borrowing of both state and federal governments.

States expect to receive definite financial benefits from establishment of the Loan Council, by (1) enhancement of Australia's credit at home and abroad, (2) arrangement of loans with the least possible disturbance of the money market, (3) taking advantage of favorable financial conditions, (4) decreased interest through absence of competition with the Commonwealth in loan markets, (5) strict limitation of loan programs, and (6) proper provision for a sound sinking fund in respect to all new debts created by the Loan Council.[13]

Railways. Federal assistance to state-owned railways has been fostered chiefly because of non-uniform gauges. By a series of legislative enactments beginning in 1922, the Commonwealth government has coöperated with Queensland, New South Wales, and South Australia in building a trans-Australian railway of uniform gauge. Definite portions of the railway are being built at Commonwealth expense.

Ministerial Conferences. The system of direct and indirect federal aid to states is held together by the ministerial conference. Meeting frequently to consider administrative problems bearing especially upon matters

[10] *Report of the Royal Commission on the Constitution of the Commonwealth*, p. 179.

[11] In 1922, the South Australian Farmers' Agreement Act provided federal loans to a Farmers' Coöperative, as a result of an agreement between the South Australian Farmers' Coöperative, the state of South Australia, and the Commonwealth. Obviously, this cannot be classed as a direct Commonwealth-to-state loan.

[12] The present agreement providing for the Loan Council is based upon a temporary agreement of 1927, which could not become permanent until the constitution was amended (in 1929) to give the Commonwealth increased financial powers.

[13] H. J. Exley, in *Australasian Economic Record*, May, 1926, p. 57.

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of mutual interest, prime ministers and other ministers have investigated numerous important problems. Health, railways, taxation, tariff, uniformity of laws, navigation, immigration, education, transportation, and communication—to mention but a few—have been subjected to examination. Resolutions coming out of these conferences often result in formulation of state, as well as of Commonwealth, policies, and exchange of information proves exceedingly valuable to the states. In a general way, the ministerial conference corresponds to the governors' conference of the United States; the latter deals chiefly with interstate relations, the former with state-federal matters.

Conclusion. The Australian system of federal aid includes direct Commonwealth-to-state assistance as follows: outright grants to all states upon a basis determined by the Commonwealth; special grants to certain states; return of surplus revenue to states; allowance of state tariffs for a limited time after federation; grants-in-aid for purposes of road-building; and grants to state institutions for educational purposes. Indirectly, federal financial assistance is rendered the states through the functions of the Loan Council, including control by the Commonwealth of internal and external state borrowing, contributions to sinking funds for redemption of state debts, contributions toward interest on state debts, and assumption of state debts by the Commonwealth. Before establishment of the Loan Council, state loans for purposes of development and migration were floated by the Commonwealth. States benefit from federal projects of railway-gauge unification. Utilization of Commonwealth administrative organs provides indirect assistance to states, notably in the fields of taxation and banking, whereas ministerial conferences offer them information and guiding principles.

Contrasted with the United States, the Commonwealth does not subsidize as many locally administered functions, but permits much greater latitude for unfettered state control of federal grants. As a requisite of federal aid, fewer obligations are imposed upon Australian states than upon our states; state contributions are infrequently a requirement of federal aid; nor do states now "match the federal dollar."

Possibility of federal centralization exists no less in Australia than in the United States. In its assistance to states through state-federal agreements such as those governing taxation, banking, loan flotation, and assumption of state debts, the Commonwealth possesses great potentialities of state financial control. Whatever may be the effect of the latter arrangements, they must be regarded as comprising the unique features of Australian federal aid, in view of their ultimate aim of state assistance.

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The Dutch East Indies.[1] It is safe to say that very few people in the United States have any appreciation of the importance of the Netherlands Indies to Holland, to the world at large, or to the United States. Yet they constitute a major part in the economic prosperity of Holland, furnish a large element in the international trade of the world, and are significant factors in the foreign trade of the United States. They are also the seat of political developments, resulting from the political awakening of Asia, which are worth attention.

From west to east, these islands extend more than 3,000 miles, or as far as from San Francisco to the longitude of the eastern end of Maine; and from north to south, more than 1,000 miles. They cover an area of 733,681 square miles, equal to about half of Europe excluding Russia; and they had a population of 60,731,025 in 1930. They furnish about one-third of the rubber, 90 per cent of the quinine, and 70 per cent of the pepper for the world, besides substantial proportions of tea, coffee, sugar, petroleum, and other products. About 10 per cent of the foreign trade is with the United States.

Much the most important of the Netherlands Indies is the island of Java, with an area of 50,000 square miles (about the same as the state of New York) and a population of 41,719,524 in 1930. The other islands, with more than ten times the area of Java, have less than half the population. There are six cities in Java with more than 100,000 inhabitants: Batavia, 437,433; Sourabaya, 366,814; Samarang, 217,775; Sourakarta, 163,013; Bandoeng, 166,722; and Djokjakarta, 136,554. The largest cities in the other islands are Macassar in Celebes, with a population of 86,662, and in Sumatra Palembang with 109,069 and Medan with 74,976.[2]

The native inhabitants are mainly of Malay stock, of different tribes and degrees of civilization. In the eastern sections, Polynesian influences are evident. Early in the Christian era, Hindus came from India who introduced their religion, amalgamated with the earlier peoples, and developed important political systems. Later came Arabs, who spread the Mohammedan faith which now prevails. From time to time, Chinese emigrants have come, especially in recent years. There are now about a million "foreign Orientals," approximately half of them in Java.

European influence began with the Portuguese in the sixteenth century; but these were replaced in the next century by the Dutch, who hold political control and constitute the largest part of the 200,000 Europeans. There are, however, considerable numbers of Germans, British, Danes, and Swiss, as well as Americans and Japanese.

[1] Cf. *Handbook of the Netherlands East Indies, 1930.* Published by the Division of Commerce of the Department of Agriculture, Industry, and Commerce. Buitenzorg, pp. 414.

[2] *Indisch Verlag, 1931* (Batavia).

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Until the end of the eighteenth century, the Dutch control was exercised by the United East India Company; but in 1788 the company was dissolved and its political powers were taken over by the government. During the Napoleonic wars, Holland and its possessions having been annexed to France, the Dutch East Indies were occupied by the British (1811-16); but for the most part they were restored to the Netherlands. Under the earlier colonial policy, the islands were exploited for the benefit of the Dutch traders and government, especially under the "culture system," which prevailed from 1830 to 1870. But in recent years there has been a distinct change in policy in favor of native interests, and important steps have been taken in the direction of self-government.

Legally, the Netherlands Indies form part of the Kingdom of the Netherlands; and the Queen and States General constitute the highest political authority. In practice, this authority is exercised only for laws of constitutional importance and on the main principles of economic policy. The basis for government is to be found in the Constitutional Act and the Netherlands Indies Government Act, which in their present form date from 1925. Supervision by the home government is exercised through the minister of the colonies.

At the head of the government in the Indies is the governor-general, appointed by the crown, with the council formerly consisting of the governor-general as president, a vice-president, and four other members nominated by the crown. These have all been Hollanders; but by the act of 1928 the number of other members has been increased to six, and two natives have been appointed. Formerly, the assent of the Council was required for legislative ordinances and other matters; but since the establishment of the Volksraad, it is now mainly an advisory body. It must be consulted on certain affairs, and on some its assent is still required.

The Volksraad, or People's Council, authorized in 1916 and first organized in 1918, was created as an advisory body, but by later legislation its assent is necessary for legislative ordinances. It consists of a president, nominated by the crown, and sixty other members, partly appointed by the crown and partly elected for four years, from three groups, i.e., Hollanders, the native population, and foreign Orientals. The president has been a Hollander; and of the remaining members, thirty have been Hollanders, twenty-five natives and five foreign Orientals. By an amendment of 1929, beginning with the election of 1931, the natives have thirty of the sixty members.

As first established, the governor-general could consult the Volksraad on all matters, but was obliged to consult it on the budget, colonial loans, and the military obligations of the residents. Under the amendments of 1925, it must be consulted on all legislation and has the right to amend

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bills, to pass on private members' bills, to petition the crown and States-General, and to interpellate the government. At the election in January, 1931, for fifteen European members of the Volksraad, one party (the Patriotic Club) elected five members, another (the Indo-European Union) elected six, and four other groups each elected one member. A committee of delegates, consisting of the president and twenty other members of the Volksraad, elected by that body on the basis of proportional representation, has power to act on proposed ordinances when the Volksraad is not in session.

Public administration is highly developed and well organized. There are seven civil departments: justice; civil service; finance; education and worship; agriculture, industry, and commerce; public works; and government industries. The chiefs of these, with the heads of the war and naval departments, form an advisory council to the governor-general. There is also a general secretary.

For localized administration, there has been an important distinction between the territory under direct government and that where government is carried on through native rulers. In recent years, new local self-governing agencies have been developing, and a general reorganization of provincial and local government is now under way. In Java, only seven per cent of the population is in native states, but in the outer islands six of the fourteen million inhabitants are in such states. These have been governed under special treaties; and since 1918 the older treaties have been replaced by what are called "succinct treaties" and regulations for native states. Under these arrangements, Dutch official advisers no doubt exercise a good deal of influence on the native governments.

For the regions under direct administration, there have been a considerable number of relatively small provinces or residencies, each under the direction of a governor, resident, or assistant resident; while these have been subdivided into districts, under assistant residents. In the outer islands, there have been further subdivisions under administrators. The higher officials have been Hollanders trained at the Universities of Leyden and Utrecht. The administrators have been trained at the school for civil servants in Batavia. There are also native officials known as regents and subordinate native officials, of special importance in Java, where they are known as Buptai; and since 1918 there has been a tendency toward the devolution of responsibility to these native officials.

Native villages or groups of villages form local communities with autonomous powers and finances. The larger urban centers and districts were formerly directly under the control of the central government. But under a decentralization order of 1904 and a local council ordinance of 1905 there have been organized in Java 32 municipalities and 15 provincial

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councils. These provincial councils have been appointed by the governor-general, with an official majority. The municipal councils are mostly elective, but with a majority of Europeans and appointed burgomasters. Other local councils in the outer islands are partly elected and partly appointed. Where there is a union of local native communities, there is a majority of natives.

These arrangements, however, are being gradually replaced by a reorganized system of provincial and local government. An act of 1922 provides for a new type of provincial councils for larger provinces. The first of these new provinces to be organized was that of West Java, including four former regencies; while the new provinces of Mid-Java and East Java were being organized in 1931. The new and larger provinces will each have a governor, who will act both as agent of the central government and head of the local self-government. There will also be a provincial council, partially elected and partially appointed, from different groups, with a committee of deputies to act for the council when not in session.

In other regions where the new system of provinces has not been established, rearrangements are being made leading toward it. In some cases, several of the former residencies have been combined under a governor without as yet a provincial council, but with some minor local councils. In some cases, regency councils have been appointed for Bupati districts, partly elected and partly appointed.

Judicial administration presents a combination of European and native systems. For Europeans, the civil, commercial, and penal code approximates that of the Netherlands; and the penal code is also applicable to natives and foreign Orientals. In civil cases, the Chinese are much the same as Europeans. Other foreign Orientals are governed by the same law as Europeans as far as property rights are concerned, but by their customary family law. Natives are under their customary civil law, and even in the native states the criminal law is influenced by the penal code.

There are European courts for Europeans, and also in civil and commercial cases for natives and foreign Orientals, in so far as they are subject to European law; but also native courts for some matters, as for matrimonial and inheritance cases in Java, where Islamic law is applicable. There is a series of district courts, cantonal and magisterial courts, and regency tribunals.

Government revenues are derived from a variety of direct and indirect taxes, and also from various commercial undertakings. Direct taxes are imposed on incomes, on limited liability companies, and on real estate. Indirect taxes include import and export duties, excises, property transfer and succession duties, and stamp taxes. Commercial revenues include those from government industries (railways, posts, telephone and telegraphic

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services, harbor works, and water power stations), from tin, coal, and other mines, from forests, from government monopolies of salt and pawnshops, from government cinchona, gutta percha, and rubber estates. The total ordinary revenue in recent years has been about two hundred million dollars, or four dollars per capita.

Until the period of the World War, expenditures never exceeded revenues. But the increase of prices for extensive improvement works which had been undertaken, with other consequences of post-war conditions, have resulted in deficits, met by loans now amounting to a debt of four hundred million dollars, which is much more than offset by the value of government properties and industries.

A good deal of attention is given to public health conditions, by means of hospitals and preventive measures. Endemic diseases are kept under control; and the average death rate is about twenty per thousand, as compared with thirty per thousand in British India. In the cities, however, the death rate is much higher, as is also the death rate of children. The birth rate is also high.

Elementary education is furnished in Dutch and vernacular schools, but does not extend to all children. There are, in addition, secondary and technical schools; also professional schools in law and medicine.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

The twenty-eighth annual meeting of the American Political Science Association will be held at Detroit on December 28-30, with headquarters at the Statler Hotel. Following the procedure of recent years, the round-table sessions will be held in the morning and section meetings in the afternoons. Round tables and their chairmen include: (1) International Relations, Phillips Bradley; (2) Judicial Administration, Robert E. Cushman; (3) Political Parties and Public Opinion, Thomas S. Barclay; (4) Local Government (chairman to be announced); and (5) Comparative Government (chairman to be announced). The section meetings and their chairmen include: (1) Public Administration, Frank M. Stewart; (2) Public Law, Oliver P. Field; (3) Legislation (chairman to be announced); and (4) Political Theory (chairman to be announced). There will be three luncheon meetings, one of which will be devoted to certain of the larger interests of the Association, with reports of officers and committees. The presidential address will be given on the second evening. The usual summer meeting of the Executive Council is being omitted this year.

Dr. Lewis Meriam, of the Brookings Institution, is giving a course and a seminar in public administration at the University of Chicago during the second term of the summer quarter.

Professor Quincy Wright, of the University of Chicago, attended a round table at the seventh session of the seminar in Mexico conducted by the Committee on Cultural Relations with Latin America.

Professor Edwin A. Cottrell, of Stanford University, will give courses in the Graduate School of the American University, Washington, D.C., during the first semester of the coming year.

At the University of California at Los Angeles, Dr. Malbone W. Graham has been promoted to a full professorship and Dr. H. A. Steiner to an assistant professorship.

Professor Harold F. Gosnell, of the University of Chicago, has been retained by the Hoover Commission on Social Trends for editorial work during the summer.

Professor Rudolf Broda, of Antioch College, died at Dayton, Ohio, on May 10.

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Mr. John D. Lewis, recently an instructor at the University of Wisconsin, will spend the coming year in study in Germany under appointment by the American German Student Exchange.

Hon. Roland S. Morris, professor of international law at the University of Pennsylvania, has been elected president of the American Philosophical Society, an association founded by Benjamin Franklin in 1727. The degree of doctor of laws was conferred on Mr. Morris at the annual commencement of the University in June.

Dr. Carl J. Friedrich, of Harvard University, has been promoted from an assistant professorship of government to an associate professorship.

Professor David P. Barrows, of the University of California, is devoting the summer to observation and study of political and economic conditions in Germany.

Professor Harold D. Lasswell, of the University of Chicago, is spending the summer in Germany and Russia starting a study of Soviet propaganda. Professor Jerome G. Kerwin, of the same institution, is also in Germany during the summer.

Mr. Louis Brownlow, director of the Public Administration Clearing House, Mr. Paul V. Betters, director of the American Management Association, and Mr. Donald C. Stone, research director of the International City Managers Association, attended the London Conference of the International Union of Cities.

Professor K. R. B. Flint, of Norwich University, has been appointed executive secretary of a Vermont commission on taxation of public utility corporations manufacturing electric current, and is spending the summer in work at Montpelier.

Mr. Bernard G. Segal, instructor in political science at the University of Pennsylvania, has been named as a national reporter on contracts for the International Congress of Comparative Law at The Hague. Mr. Segal has also been appointed deputy attorney-general of Pennsylvania.

Miss Edith C. Bramhall, of Colorado College, is spending the summer in Europe, and is engaged upon a study of economic councils in a number of countries.

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Professor Earl W. Crecraft, of the University of Akron, served as a member of the political science staff at Syracuse University during the summer session.

On November 25 and 26, a Northwest Students International Conference will be held at the University of Washington, Seattle. Its purpose is the promotion of interest in international affairs, particularly those of the Pacific area. Miss Louise Fleming, 1405 East 43rd Street, Seattle, is in charge of the arrangements.

The endowment of the Penfield scholarships in international affairs at the University of Pennsylvania has been increased by a bequest of $100,000 by the late Mrs. Frederic Courtland Penfield. The sum is to be devoted to the creation of additional travelling scholarships, making a total of four appointments annually.

A first prize of one thousand dollars and five second prizes of one hundred dollars each are offered by the Charles C. Linthicum Foundation for the best essays on negotiable instruments in their international relations submitted to the Foundation (at the Northwestern University Law School) on or before December 1, 1933.

The officers of New York University have announced a conference on the obligations of universities to the social order, to be held at the Waldorf-Astoria Hotel, New York City, on November 15-17. An evening session devoted to the subject of the university and governmental changes will be presided over by Dr. Harold G. Moulton, president of the Brookings Institution.

A biennial session of the Pacific Institute of International Relations was held at Reed College, Portland, Oregon, from July 11 to July 16, under joint sponsorship of Reed College, the University of Oregon, Oregon State College, and other institutions. Former sessions were held at the University of Washington in 1928 and at the University of California in 1930. The Institute is financed by a grant from the Carnegie Corporation, supplemented by an appropriation from the Portland Chamber of Commerce.

At the 1931 session of the General Assembly of Illinois, a bill was passed creating a joint legislative committee on taxation and economy, with a mandate to look into problems of local government as well as state government. A sub-committee on local government, under the chairmanship of Elmer J. Schnackenberg, has undertaken to deal with the problem of re-

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organizing the governments of the Chicago metropolitan area and with that of county reorganization and local government simplication throughout Illinois outside of Cook county. The sub-committee has retained Griffenhagen and Associates for assistance in devising plans, estimating savings, and drafting recommended legislation.

Under the joint auspices of the American Judicature Society and the National Municipal League, a national committee has been created to undertake a study of the general subject of selection of the judiciary. Among political scientists included are Dr. W. F. Willoughby, of the Brookings Institution, Mr. Richard S. Childs, of New York City, and Professors Walter F. Dodd, of Yale University, Raymond Moley, of Columbia University, William B. Munro, of the California Institute of Technology, and Frederic A. Ogg, of the University of Wisconsin. Other members are Messrs. Newton D. Baker, Frank J. Loesch, Dean Roscoe Pound, Murray Seasongood, Silas H. Strawn, John H. Wigmore, Walter W. Cook, and L. C. Marshall. The chairman is Dean Justin Miller, of Duke University.

The Bureau for Government Research at the University of West Virginia, John F. Sly, director, has undertaken a systematic survey of state and local government in West Virginia. The project is being financed jointly by the University and the West Virginia Taxpayers Association, Edwin M. Keatley, secretary, with headquarters at Charleston. The program calls for a series of reports covering the structure, services, and finances of local, municipal, and state government within the state. The first study, dealing with the county and its minor subdivisions, is expected to be ready for the press by October 1. The emphasis in financial matters will be on problems of expenditure rather than of revenue. Two additional reports covering municipal and state government are parts of the major program to be completed within the next biennium.

Shortly after its creation, the Brookings Institution established a retirement system under which all of its officers and staff are retired upon reaching the age of sixty-five. In accordance with this system, Dr. W. F. Willoughby retired in July as director of the Institute for Government Research, of which he had been the head since its creation in 1916. Prior to assuming this post, Dr. Willoughby had a varied and significant career, including eight or nine years in Porto Rico as treasurer and later president of the executive council, two years as assistant director of the United States census, membership in the President's Commission on Economy and Efficiency in 1911-12, an advisory relation to the Chinese Republic in 1914-16, and five years as professor of jurisprudence and politics at Princeton

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University. The success with which he has for sixteen years managed the affairs of the Institute for Government Research and the number and worth of his writings during this period are too well known to political scientists, the world over, to require comment. Following his retirement, Dr. Willoughby plans to spend some time abroad.

The Geneva Research Information Committee, which was organized in Geneva in 1930, under the directorship of Mr. Felix Morley, for the purpose of research and publication in the field of international relations, and particularly on problems of the League of Nations, has recently been enlarged and reorganized into the Geneva Research Center and moved to more spacious quarters at 3 Rue Butini, in close proximity to the Secretariat of the League of Nations. Although a completely independent agency, the Center is able to maintain close relations with the offices and facilities of the League, and is therefore in a peculiarly advantageous position in carrying on its work. It has already published more than twenty monthly studies, under the general title of *Geneva Special Studies,* dealing with various League problems, including several devoted to the relationships of the United States, three to the Manchurian phase of the Sino-Japanese conflict, and one to the Shanghai phase. Mr. Malcolm Davis, of the Yale University Press, assumed the directorship of the Center in the summer of 1931. Other members of the directing committee are Mr. Arthur Sweetser and Dr. Benjamin Gerig, of the League Secretariat; Mr. J. McC. Sturgis, treasurer, and Mr. C. C. McIvor, secretary; and Professors Pitman B. Potter, recently of the University of Wisconsin, Jacob Viner, of the University of Chicago, and Clarence A. Berdahl, of the University of Illinois. Professors Potter and Berdahl have contributed to the published *Studies.* The Center likewise publishes a monthly review of events in connection with the League of Nations, entitled *Geneva.*

The summer meetings of the Pacific Southwest Academy, a center of the American Academy of Political and Social Science, took place on July 13 and 14 at the University of California at Los Angeles. The proceedings opened with a luncheon address by Thomas D. Campbell, former agricultural adviser to the Soviet government, on "Russia in the World Market." In a round table on "American Trade with Soviet Russia," papers were read by Cecil A. James, of the Los Angeles Chamber of Commerce, on "The Future Outlook for Trade with Soviet Russia," and Thomas D. Campbell, on "Russia as a Potential Industrial Competitor of the United States." "Regional Groupings in Modern Europe" was the subject of a discussion in which a paper on "A Balkan Confederation" was presented by Dr. Christine Galitzi, of Scripps College; a paper on

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"The Baltic States as a Regional Unity," by Dr. Antonius Piip, of the University of Tartu, Estonia; and one on "Inter-Scandinavian Coöperation," by Dr. Eric C. Bellquist, of the University of California. "The Prospects for Treaty Revision in Europe" was discussed in papers by Professors Henry R. Spencer, of Ohio State University, and Malbone W. Graham, of the University of California at Los Angeles. Other round tables dealt with "Disarmament," "Japanese-American Relations," and "Changing Relationships in the British Commonwealth." In an evening conference and radio broadcast, there was a discussion of various phases of the Manchurian conflict, with addresses by Dr. Russell M. Story and Prof. André Lobanov-Rostovsky. The meetings came to a close with a banquet in honor of Dr. Antonius Piip, who spoke on "The Codification of International Law." The program was arranged by a committee consisting of Professors Eric A. Beecroft (chairman) and Malbone W. Graham, of the University of California at Los Angeles, John P. Young, of Occidental College, and Constantine Panunzio, president of the Academy.

Radio Program of the American Political Science Association. At its meeting in Washington last December, the Political Science Association enthusiastically endorsed the efforts of the Committee on Policy to cooperate with the National Advisory Council on Radio in Education in taking advantage of the National Broadcasting Company's offer of a half-hour a week on the air for four years for programs of civic education. The "You and Your Government" series presented this spring has attracted widespread and favorable attention. Especially significant has been the disposition of secondary schools to make use of the programs in supplementing their civics instruction. Leading members of the Association have contributed able addresses, all of which are published by the University of Chicago Press and obtainable from it at ten cents each. Much progress has been made in learning how to present to the public in attractive guise the best knowledge that political scientists possess on current problems. The effort has been to translate scientific truth into popular language. If scholarship is to have practical results, it is important that it adjust itself to this vehicle of popular expression.

Last December it was confidently expected that ample funds would be forthcoming to carry on this work. The depression, however, has put an end to any immediate prospect of this kind. We found ourselves faced by the necessity of making real sacrifices if the programs were to be continued. The Committee on Policy was polled, and it was found unanimously in favor of going ahead. With only one dissenting vote, the Committee decided to devote a portion of its funds, amounting to substantially five thousand dollars, to the preparation of programs, the expenses of speakers,

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and as much publicity as possible. Continuing efforts will be made for additional funds (in coöperation with the National Advisory Council on Radio in Education), which will be devoted, if obtained, to wider publicity. The Committee also voted to ask the members of the Association to speak without compensation, and the executive group of the Committee on Civic Education by Radio, which is preparing the programs, will likewise serve without compensation. On this basis, it is possible to announce that the programs will be continued next fall beginning Tuesday, September 6, and running through the winter and spring. The theme from September 6 until the election will be "Problems of Government in a Depression," and after election until New Year's, "Constructive Economy in State and Local Government." The program up to the election is as follows:

(1) September 6, "Issues Between the Parties," Lindsay Rogers, Columbia University (Democratic party); Frederick M. Davenport, member of Congress from the 33rd New York district (Republican party); Algernon Lee, Rand School (Socialist party).
(2) September 13, "Issues Above the Parties," A. R. Hatton, Northwestern University.
(3) September 20, "Constructive Economy in the Federal Government," Louis Brownlow, Public Administration Clearing House; Carl R. Chindblom, member of Congress from the 10th Illinois district; William Hard, Washington, D.C.; Henry P. Seidemann, Brookings Institution; and Miss Katherine A. Frederic, National League of Women Voters.
(4) September 27, "Constructive Economy in State and Local Government," Thomas H. Reed, University of Michigan; H. W. Dodds, Princeton University; Miss Dorothy Strauss, Women's City Club of New York; Joseph McGoldrick, Columbia University; and Luther Gulick, Institute of Public Administration.
(5) October 4, "What Can Government Do to Prevent and Relieve Unemployment?," Robert F. Wagner, U. S. senator from New York, and Charles A. Beard, New Milford, Conn.
(6) October 11, "How Can Government Aid Finance and Banking?," John T. Madden, Alexander Hamilton Institute, and Walter F. Dodd, Yale University.
(7) October 18, "How Can Government Provide Greater Security in Our Economic System?," Paul Mazur, Lehman Brothers, New York City, and Arthur W. Macmahon, Columbia University.
(8) October 25, "Mechanics and Maneuvers of Campaigns," Arthur N. Holcombe, Harvard University.
(9) November 1, "Why Vote?," Charles E. Merriam, University of Chicago.

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On behalf of my colleagues in the Committee on Policy, may I bespeak from the members of the Association their earnest coöperation in giving as widespread announcement as possible to these broadcasts? As last spring, they will occur on Tuesday evenings at eight o'clock (Eastern daylight saving time to and including September 20, and thereafter Eastern standard time). Money is not available for the extensive circularization which was employed in announcing last spring's program. This makes it all the more important that the individual members of the Association coöperate in spreading the news. The broadcasts will be over the blue network of the National Broadcasting Company, probably through much the same stations as last spring, with certain important additions. As soon as the station list is available, a copy will be sent to each college and university department of political science. A "Listener's Handbook" will be published by the University of Chicago Press, and will be available at twenty-five cents a copy. Copies of the individual addresses will also be available at ten cents each.

THOMAS H. REED.

University of Michigan.

Some Political Aspects of Economic Planning. Planning is thought of primarily as a Bolshevik invention and experiment. Discussion of it in relation to other countries is, therefore, helpful as revealing that it has many roots and can assume different forms; though such discussion may result in confusion if it tends to identify national economic planning with state enterprise or with state intervention in business generally. For many who discuss planning in Western Europe and in the United States point to the Viag in Germany, or to the land reclamation projects in Italy, or to the work of the various federal boards in America, as examples of national planning. This tendency is in a way a counterpart in politics of the tendency to identify planning with rationalization in specific industries common among business men and economists.

Both tendencies have value, however, in revealing the important part which planful procedure plays in economic and political life even under our system of laissez faire and political individualism. But for purposes of precision in analysis, it seems to me that we must insist on a clear and larger concept of national economic planning as distinct both from technical and industrial planning and from partial governmental regulation and partial government ownership. National economic planning implies a collective procedure which treats all individual and separate plants, enterprises, and industries of a country as coördinated units of one single system for the purpose of achieving the maximum satisfaction of the needs of the people within a given interval of time. The essential features in

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such planning are the interdependence of all productive units, the maximum utilization of productive forces for the needs of consumption, and the conscious direction of the social system toward nationally recognized objectives.

It is obvious that if we define economic planning in such terms, we are forced to conclude that there is as yet very little of it outside of Soviet Russia. The operations of state and municipal enterprises in Western Europe can at most be compared in the political realm with schemes of partial planning in specific industries in the economic domain. The operations of the Viag in Germany, the largest single state-owned enterprise in the world outside of Russia, are similar to the operations of large corporations or holding companies in the United States.

But while there is as yet little national economic planning in Western Europe or America, we may say that the elements of such planning are in process of development. Italy has adopted a structure of economic life which, under proper conditions, may be used for planning. The growth of state-operated industries in Germany and in other western countries is in itself a factor which undermines the operation of laissez faire and calls into play the alternative procedure of planful management. The expansion of government regulation of transportation, agriculture, and especially of credit, in the United States implies a reliance on collective effort which tends in the same direction. The work of the national economic councils in the several countries where they exist is furthering the idea of national economy and of the need for treating it in a unified way. It may thus be said that economic planning is now in process of emergence in the Western World as a principle opposed to that of laissez faire. The question is how, and to what extent, that principle is destined to replace laissez faire, and what institutions it will call forth in different countries.

It is from this point of view that I have attempted to distinguish several types of national economic planning. The assumption is that while the economic and social systems of the Western World have similar foundations, they show variations significant enough to warrant classification into types. That was true of feudalism, of the earlier stages of capitalism; it is true of present-day industrialism. The types of national economic planning which I distinguish are five in number: (1) absolute socialist planning, (2) partial state socialist planning, (3) Fascist, or nationalist, planning, (4) business planning, and (5) social progressive planning.[1] In these types of planning, many of the differences center primarily around specific economic questions, such as the control of prices, the type of in-

[1] For definitions, see Lewis L. Lorwin, *The Problem of Economic Planning*, published by the International Industrial Relations Association (The Hague, 1931); also *Survey Graphic*, Mar., 1932.

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dustrial management, the relation of agriculture to industry, the method of adjusting consumers' demand to production, the direction of capital resources, the distribution of wealth and purchasing power, and so on.

But aside from these economic issues, the types of planning differ on points which are usually designated as political. These are the rôle of the state in economic planning, the range of individual freedom under a system of planning, and the problem of reconciling group differences in the formulation of national objectives. It is to these questions that I wish to call attention here.

Planning undoubtedly involves changes in the form and methods of the democratic state. The conception of the state which underlies Soviet planning is that of a class dictatorship to be used by a rising class to exterminate a formerly dominant class and to establish forcibly a socialist order. That is quite different from the Fascist concept, according to which the state stands above groups and classes and has the function of resolving class conflict into national coöperation. This difference affects the practical operations of the two dictatorships and their efforts at planning. The idea of the state which underlies business planning is still essentially that of laissez faire, with the concession that a closer coöperation between the state and business is called for. The social progressive type of planning holds to what may be called the theory of the social state, viewing the state as an instrument for the gradual modification of the social system, allowing group conflicts within certain limits, but rationalizing their forms and methods and using them as a means for creating a constantly expanding sense of national solidarity.

The attitudes toward personal freedom involved in the different types of economic planning are in some measure related to the idea of the state. It is inevitable that certain individual freedoms should be either curtailed or entirely eliminated under a system of Soviet planning. Whether the transition from the present planning in Soviet Russia to the final socialist system which is envisaged will be accompanied by the relaxation of restrictions or by the imposition of still greater ones is a debatable question. The Russians themselves look forward to greater freedom, which is interesting as a recognition of the ultimate value of individual freedom. Whether economic planning of any kind is compatible with a large degree of individual freedom and liberty is a crucial question which is more often answered in the negative. In fact, many who would accept planning because of the destructive results of laissez faire hesitate to do so because of the fear that it implies an abdication of individual freedom.

My feeling on the subject is that in order to answer the question we need a clearer analysis of the changing content and forms of freedom. If the freedoms which are important to the individual are the freedom of

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movement, the freedom of thought, of expressing opinion, of selecting one's mode of life, of determining the choice of things to use or not to use, of finding one's place in the productive system in accordance with one's capacity, we may say that most of these freedoms could be retained under a system of economic planning, provided that techniques of guidance are worked out in accordance with economic needs and changing psychology. That many of the repressions and restrictions which beset the individual's life today under laissez faire are not resented, and indeed are even accepted as forms of freedom, is evidence of the fact that the present system has worked out a technique of giving the individual the illusion of freedom where the latter does not really exist. Even under Soviet planning today, there would be more individual leeway, were it not for the extraordinary conditions under which the economic development of the country is proceeding and for the Soviet reaction against western democracy, which makes the Soviet planners unduly impatient, for the time being, with the problem of individual freedom.

The third problem involved in national economic planning is the formulation of objectives and plans. From an economic point of view, this is a question of reconciling the divergent interests of individuals, groups, and classes. The political aspect is that of finding the method of achieving such reconciliation. Even under Soviet planning, regardless of the dictatorial form of government, the formulation of national plans cannot, and does not, proceed without conflict. We have heard about the fights between Trotsky and Stalin, between the Rights and Lefts, and so on. Aside from the struggle between individuals for power and control, these fights reflect a conflict which goes much deeper, namely, differences between persisting economic groups and the inevitable disagreements due to differences in temperament, backgrounds, logic, and imagination. No philosophy and no methodology can completely eliminate such conflicts. The communists who think that Marxism supplies them with a basis of judgment and forecast are no less subject to this law of conflict than other people. For Marxism does not contain an answer to every question of the moment, and the application of Marxist methodology must be made by individuals whose range of vision and basis of judgment differ.

One must admit that under a system of dictatorial government, these differences can be much more easily handled. Stalin could exile Trotsky without much ado, and he can suppress differences of opinion which seem to him intolerable at any one time. Such a procedure is possible also under Fascism; though there, even more than under the Soviet government, the issuance of an economic decree does not always mean its full and easy enforcement.

The question of greatest interest is, How can such conflicts be reconciled

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under a system of economic planning that would allow the largest play to individual freedom. How can national objectives be formulated under a system in which group conflicts are allowed to have a certain sway, and in which no dictatorial force is exercised to compose them? It would seem that the answer lies in willingness to proceed slowly and to rely on the cumulative effects of rational thinking. Analysis and research can elucidate those facts of a situation which may be called inescapable, and which must be accepted by rational human beings. Conflicting groups may be brought to see the possible value of reaching agreements on the basis of such facts. And when compromises are not reached, regardless of everything that may be done, the power of decision may be placed in the hands of a final arbiter, be that the government or some other agency.[2]

There is here a task which falls peculiarly to that group in society which has taken upon itself the function of research and thinking. It is true that our professional groups and our scientific class cannot be said to have displayed as yet that unbiased attitude, that mastery of fact, and that power of imagination which are necessary to give them the right to play the part of arbiters in society. But I have faith that they can do so. For, as is seems to me, the only alternative to dictatorial government is the growth of such a class in the community, whose loyalties will be to no group, but to national interests and to progressive and social ideals. Such a class should be able to develop new methods that will be effective and yet fully inspired by respect for individual and social freedom.

LEWIS L. LORWIN.

Brookings Institution.

[2] See Lewis L. Lorwin, *Advisory Economic Councils*, 1931.

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

The Theory and Practice of Modern Government. By HERMAN FINER. (New York: The Dial Press. 1932. Two volumes. Pp. xv, 1556.)

This work incorporates the results of a far-reaching study. It cuts a wide swath through the entire field of political science, beginning with the origins of the state and ending with contemporary problems of civil service reform.

Professor Finer's plan is somewhat unorthodox, but it works out satisfactorily. He begins with chapters on those dynamic forces which have caused government to originate and be maintained over long periods of time. In this discussion, the economic propulsions, as is natural in our day, get their full share of emphasis. Then comes a survey of the conditions under which governmental activities are carried on. What are the circumstances which compel the state to undertake certain functions, and to what extent do these conditions place limits on its successful activity? "Nature is no kinder to the state," concludes the author, "than it is to men otherwise organized; nor is it more severe" (p. 59).

The state is likened to a machine, a converter of energy. Taking the psychological and physical qualities of the people, together with their resources, it develops from these whatever is deemed to be at the moment desirable. The possibilities in this way are immense, but the processes are necessarily complex. So the author takes certain examples of state enterprise and seeks to discover the conditions of their success or failure. The reader will find this chapter (pp. 98-120) an extremely suggestive and stimulating one. Incidentally, Professor Finer tells us that "legislators were harried and threatened into prohibition in the U.S.A." (p. 110), and that "such excitation was practiced that the mind of the voter was unbalanced" (p. 196)—which is hardly a scientific or impartial summing-up as applied to the entire country from Portland, Oregon, to Portland, Maine.

Following this analysis of conditions there is a long and thoughtful discussion of governmental forms, more especially of the forms which democracy assumes. The principle of separation of powers is carefully examined in the light of political experience, with a general conclusion that "all government is a simple process, the division of which into parts, and their relative power, depends upon the purpose of government and the relative technical capacity of the various bodies of men and women who are employed in its realization" (p. 180).

Passing from the category of governmental forms, there is a general

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survey of constitutions, written and unwritten, with a good deal of stress on the shortcomings of the former. In this connection, the American doctrine of judicial supremacy is presented, with several bouquets of thistles. One passage on this point will enable the American student of political science to form his own opinion concerning the author's grasp of realities in the practice of American government. Here it is:

"In Britain fundamental issues are decided almost by direct democracy; in America they are decided by a body of lawyers [the Supreme Court] neither appointable nor dismissible by democracy" (p. 222). That, of course, is rather well-stretched hyperbole and needs to be considerably deflated, as does Professor Finer's statement, later in the book, that the nominating speeches at our national party conventions "plumb the depths of inebriate pathos" (p. 1014), or that the President of the United States "proceeds from obscurity, and passes to obscurity, by way of four or eight years of formal primacy" (p. 1016).

A great deal of attention is devoted to public opinion, the electorate, political parties and party methods. In the main, the narrative here is confined to England, France, Germany, and the United States. Much illuminating discussion of this general theme is spread over more than two hundred pages, although some of it sounds like an echo from the pages of *The American Mercury*. America is a "land of village Main Streets," a "vast drysaltery" in which Rotarians, Elks, Kiwanis, and other "grown-up boy's clubs" try to "foster the same conformity and narrow-minded obstruction to reform" (p. 544). All this helps to explain, in the author's opinion, why there is only one political party in the United States, with each half of it voting in a different way.

Parliaments and other legislative bodies are then surveyed with reference to their general problems, organization, procedure, and shortcomings. Many interesting topics flit in and out of the pages which are devoted to this subject—the utility of second chambers, royal commissions, the activities of the lobby, legislative committees, the decline of the private member, experts and bill-drafting, parliamentary congestion and devolution, economic councils, direct legislation, executive law-making, the problem of non-voting, the value of proportional representation, and so on. This is followed by chapters on the organization and work of the executive in Great Britain, France, Germany and the United States—four chapters which are among the best in the book. Finally, the processes of administration are examined, with special attention to the civil service systems of the countries just named. No discussion of the courts and their work is included, although judicial administration would seem to merit recognition in a book on the practice of modern government.

Professor Finer has brought together and digested a formidable array

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of materials, as the range and plenitude of his footnotes disclose. The scope of his acquaintance with the literature of political science, with all varieties of it in three languages, is amazingly broad. Hence the usefulness of his two large volumes is altogether beyond question. Professor Finer's work, moreover, is far from being a mere compilation of other men's ideas. Much of his discussion is original, luminous, and provocative. His generalizations and conclusions, most of them, are sound and sensible; but his pen shows an inclination to skid now and then in dealing with the realities of American government. Moreover, there is a tendency to accord the political and social institutions of the United States a more persistent castigation than they really deserve.

The author's style deserves special commendation. It is forceful and vivid, with plenty of striking epigrams. But there are occasional splurges of mauve journalism, as for example the lurid description of the way in which a presidential candidate is chosen at an American national convention. An author does not always gain effectiveness by writing at the top of his voice.

WILLIAM B. MUNRO.

Pasadena, California.

America Faces the Future. EDITED BY CHARLES A. BEARD. (Boston: Houghton Mifflin Company. 1932. Pp. xviii, 416.)

The Road Ahead. BY HARRY W. LAIDLER. (New York: Thomas Y. Crowell Company. 1932. Pp. 501.)

A Planned Society. BY GEORGE SOULE. (New York: The Macmillan Company. 1932. Pp. ix, 295.)

A Program for America. BY WILL DURANT. (New York: Simon and Schuster. 1931. Pp. 146.)

Man and Technics. BY OSWALD SPENGLER. (New York: Alfred A. Knopf. 1932. Pp. 104.)

The blessed word Mesopotamia of the last decade was "rationalization;" of this decade, it is "planning." The most cordial advocates of planning are usually politically progressivist; for many it is the thin end of the wedge of public control or ownership. Professor Beard has placed this country under yet another debt by providing, in *America Faces the Future,* a conspectus of the entire gamut of proposals made, of which Dr. Hugo Haan has recently supplied a bibliography.

Almost all schemes of national planning concur in demanding the establishment of some form of economic advisory council and the introduction of experts into connection with the state in the work of social and economic organization. The paradox of modern civilization for conservatives is that, under capitalism, a vast organization for the production of

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wealth, capable of producing wealth on an unprecedented scale, is actually so working as to conduce to unemployment and poverty. Mr. Gerard Swope and Mr. Matthew Woll agree with Governor LaFollette that something must be done about it. This civilization, however, has also its paradox for the socialist, since, whereas in the political field he demands new democratic emancipation and to drink, in Roger Williams' words, "the cup of as great liberties as any people we can hear of under heaven," in the economic life of society (which, by his own testimony, cannot be divorced from the political) he proposes to give to the essentially aristocratic principle of expert guidance hitherto unprecedented significance. The truth of the matter seems to be that the business man, who always tends to be a Lockeian and an individualist in philosophy, has hitherto favored, at least in theory, a democratic free-for-all fight in which the strongest or the craftiest win, whereas the socialist (and still more patently the communist) is becoming committed to the restoration of the aristocratic principle in order to provide leadership for plain men who neither are, nor wish to be, particularly aggressive or cunning.

Despite the business man's predilection for the theory of the democratic free-for-all fight, there are two obstinate facts which make trouble in the Eden of competition and rugged individualism. The one is the present catastrophe of depression. The other is the progressive obliteration of the small employer, thanks to the tendency (amply demonstrated, so far as America is concerned, in Mr. Laidler's book) toward the increasing concentration of the control of industry in a few hands. This has happened despite the temporary setback due to the decisions under the Sherman Anti-Trust Law. "We find less than one half of one per cent of the total number of the nation's factories employing nearly a fourth of the nation's factory labor forces." It is significant that Adolph Weber, in his *Defense of Capitalism,* takes this disappearance of the old-fashioned capitalism for granted. The mythology of individual competition and rugged initiative for all lasts on, but actually the modern argument for capitalism is that it is alleged to be the best instrument for organization. The only initiative usually exercised is that of the responsible manager, doing his job whether it be for a public body or for private directors and shareholders; competition is left for a chosen few. Behind the smoke-screen of democratic competition goes on the fight of the oligarchs and—still worse —the combinations of the oligarchs.

The sum of the whole matter is to be found in the Report of the United States Chamber of Commerce: "A freedom of action which might have been justified in the relatively simple life of the last century cannot be tolerated today because the unwise action of one individual may adversely affect the lives of thousands. . . . We have left the period of extreme in-

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dividualism and are living in a period in which national economy must be recognized as the controlling factor." I would only wish to substitute, for the reference to national and capitalistic economy, the words "the humane claims of a rational civilization." National ambition, however, may well be one of the chief driving forces toward the new organization and toward implementing the plans of existing blue-prints whose final fulfillment must yet be consistent with more liberty than hitherto in significant matters.

Mr. Soule, in his entirely admirable book, *A Planned Society,* provides the best reply yet written to the problem set forth in Mr. Fred Henderson's *Economic Consequences of Power Production.* "The attempt which we have formally made to force a living economy into the conceptual form approved by Adam Smith, on the theory that if we could do so it would become self-regulating and automatically balanced, is a first-rate example of walking backwards. . . . The battle for an individualist, *laissez-faire* economy, self-regulated by competition is definitely lost." Mr. Soule declares that "it would be futile to lay out a 'plan' for a society in the same way that an architect can make a set of drawings and specifications for a building." On the other hand, he faces that problem which the British Socialist party is now having to face, and does not leave us with mere generalities. He wants not merely a well-designed national economic advisory board (a badly designed board, it may be said incidentally, has been a rather dangerous failure in Britain, just as the expert Tariff Commission has been in this country), but a central administrative organ of some sort for each important industry. Here he seems to hold out a hand, on the one side, to Mr. Swope and, on the other, to Mr. E. F. Wise's import board proposals. The objection to the Swope plan is that it would place an undue amount of power in the hands of private persons, which power could be used in restraint of trade for purpose of profit and to the consumer's loss. Mr. Soule, however, is probably wise in his revisionist attitude. The cardinal problem of our day is how to place an aristocracy of disinterested persons in control of power. But it may well be that an intelligent oligarchy may do much to put all other things under the feet of a plan designed to obliterate the scandal of starvation in the midst of plenty and of conditions inconsistent with a minimum of human dignity in the midst of modern facilities. Later, that oligarchy itself may be put under and the values, not of money, but of human personality can be established.

Mr. Will Durant, "in a mood of humility," has written a book to tell the plain citizen that very many important things are happening in this great country and to invite him to be intelligent about them. Herr Oswald Spengler, a bellicose ex-schoolmaster, who has a vogue in some quarters,

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has abandoned the production of philosophies of history which were considered good in art by the mathematicians and good in mathematics by the artists, for the less vulnerable and less laborious occupation of producing pamphlets expensive, oracular, and brief. He here compensates for his late avocation by sundry references to the importance of man recognizing that he is a human carnivore; also that he has a soul. Dr. Spengler insists that all history is a conflict between the "thoroughbred tradition—kingship, nobility, army"—and the priestly, intellectual tradition. "Collective doing by plan" is the first step in the downward path of becoming artificial and intelligent; "all things organic are lying in the grip of organization." I find nothing else significant in this work. The less pronouncedly carnivore reader will probably prefer Plato.

GEORGE E. G. CATLIN.

Cornell University.

Money and Politics Abroad. By JAMES KERR POLLOCK. (New York: Alfred A. Knopf. 1932. Pp. xv, 328.)

Under this rather ambitious title, Professor Pollock treats campaign expenditures and their regulation by law in England, Ireland, Germany, and France. The first two hundred pages deal with the practice in England, the account of other countries being correspondingly more brief. The work is based upon field investigations and observations of campaigns and elections in the several countries during the years from 1927 to 1930. Professor Pollock made three trips to Europe during the period, at times when important elections were coming on, and traveled widely in England and on the Continent in carrying on his researches. He very properly prides himself upon the fact that his findings are not based upon a study of musty documents, reports of commissions, or speculations made in the confines of his own study, but are based instead upon first-hand investigations and interviews with politically informed persons in the several countries.

The problem of money in elections is of great importance, and, in this country, is perhaps of all electoral questions the most baffling. There is a very wide variation in state laws regulating campaign expenditures, ranging all the way from practically no regulation at all to very complete regulation. It is generally agreed that these state regulations are unsatisfactory. In most states, they are observed in the breach rather than in compliance. Although the Wisconsin law has been cited as perhaps the most complete and thorough of all the state provisions on the subject, the Kohler case of 1930 revealed very strikingly that the Wisconsin law is far from effective. Many well-informed persons believe that at present the best regulation of campaign expenditures in this country is none at

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all; for such laws as we have are openly flouted. National regulation was virtually broken down by the Newberry decision, and a decade has passed without Congress being able to agree upon a sound measure; although a comprehensive bill introduced by Senator Nye, and drawn with the aid of Professor Pollock, is now pending.

A detailed study of campaign expenditures abroad and their regulation by law should throw considerable light upon this baffling problem in our own country. By reason of his previous study of the question in the United States, Professor Pollock is particularly well qualified to conduct such an investigation. The study of England is significant because of the apparently satisfactory solution of the problem there. The famous Corrupt and Illegal Practices Prevention Act was passed in 1883, and remains, with only minor alterations, on the statute books today. This act regulates the amount which may be spent by a candidate for Parliament and how it may be spent, and prohibits expenditures by unauthorized persons, but it does not effectively regulate the source of contributions, nor does it regulate at all the expenditures by the central offices of the political parties, or the nursing expenditures of candidates between elections. Despite these shortcomings, Professor Pollock regards the English law as generally satisfactory, though he predicts that the central party organizations will come under regulations requiring publicity within the next decade. He finds that election expenditures in England are moderate, and are devoted to salutary purposes, largely educational in character. Other writers are not so optimistic about the matter. The assumption is made throughout that England is well satisfied with her Parliament, and that as long as good results are achieved, there is no occasion to question too closely the methods employed. Such writers as Ramsay Muir take just the opposite point of view—that there is a growing dissatisfaction with elections and Parliament.

Expenditures in Germany approximate in amount those in England, but are subject to very little public regulation. Under the list system of proportional representation, the political parties are virtually able to dictate who shall be elected to the Reichstag and to the Landtags, because those candidates placed at the top of the list are virtually certain of election and those lower on the list are certain of defeat. The position on the list is determined for all parties, except the Social Democratic party, by the party executives, and hence positions may be virtually sold to persons or organizations of wealth; and this is what is happening in Germany. Wealthy interests are able to place representatives in legislative bodies by dickering with political parties, and these interests are identified with no particular party, but contribute to several parties to secure seats. While the source of campaign funds in Germany is therefore much

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to be condemned, except for the Social Democratic party, which is supported by its membership, the use of the funds is salutary. There is little personal solicitation or currying favor with the voters, but a large amount of political advertising and education. The printing bill of the party organizations is very large.

The practice in France is almost the reverse of that in Germany. The money spent is less in amount, and it is used more in treating and personal solicitation of voters. Legal regulations are of small consequence. Although the country was exercised over the problem sufficiently to appoint an investigating commission in 1924, which brought out in its hearings the influence of money contributed by special interests to campaign funds, the findings aroused so little interest that the commission discontinued its hearings and never filed a formal report.

As the author points out at various places, "whoever pays the piper may call the tune." But he does not arrive at any conclusion about what type of regulation of this phase of the problem is most satisfactory, except perhaps publicity of contributions, which he advocates throughout. He does not examine very critically the use of money on the day of elections in the form of paid workers, transporting voters to the polls, etc. Many persons regard this as the most important aspect of the problem. In his concluding chapter, he urges greater concern over the problem of campaign expenditures, and continued efforts to regulate them, either by public or by party action.

JOSEPH P. HARRIS.

University of Washington.

Monetary Problems of the British Empire. BY S. E. HARRIS. (New York: The Macmillan Company. 1931. Pp. xviii, 569.)

The greatest monetary problem of the British Empire at the present time is that of stabilizing the so-called inter-imperial exchanges. The return to the gold standard is no longer an unquestioned certainty, and the time of such return is indefinitely remote, depending, as it does, on a degree of international coöperation and good-will which has not so far been forthcoming. Great Britain has therefore been obliged to cut away from an unsatisfactory and internationally mismanaged gold standard and has set up an independent standard of her own in sterling. For Great Britain, the greatest monetary problem now is to control the new standard in such a way as will give the most advantageous results; for the Empire, the problem is how to maintain a sterling exchange standard. It was the opinion of the British Treasury in 1923 that the maintenance of a sterling exchange standard would not present any great difficulties except in the case of Canada.

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Dr. Harris does not, and did not intend to, deal directly with these present problems; for in the first place, his record, commencing with the World War, rarely goes beyond 1924, and, in the second place, Canada is deliberately omitted, apparently on the ground that New York, rather than London, is the Canadian money market. Nevertheless, the interest and value of his book is largely in the light it throws on the difficulties of successfully managing a British currency divorced from gold and on the nature of the problems with which a sterling exchange standard will have to contend. It is true that the management which the author traces with such painstaking care, and handicapped by an insufficiency of available information, is mainly that of the war period, when sound finance had at times to be subordinated to political exigencies; and for this reason we may hope that the difficulties now to be encountered will be on a less formidable scale. On the other hand, the war threw into a high light the inherent difficulties involved, and Dr. Harris' searching exposition of the actual course of events will be of permanent value.

There are some minor points for criticism. Dr. Harris appears to argue that, if debtor nations did not need to introduce a moratorium at the outbreak of the war, Great Britain, a creditor nation, should not have found it necessary; whereas, the moratorium was occasioned precisely because of the difficulties Britain's debtors had in remitting. The statement on page 137 that the authorities—presumably the allusion is to the Bank of England—attempted to conceal the nature of the advances to the Dominion governments by an irregular system of accounting is harsh, especially in view of the fact that the author is aware of the probable explanation, which he gives on page 142, of what happened. The author also says (p. 303) that it is not generally known that Canada in 1917 issued fifty millions of dollars in notes against securities deposited by the Imperial government in London. What happened was that the Dominion government arranged for a credit in Canada to this extent. In so far as this involved a necessity for further issues, these were obtained in the usual way by advances to the banks under the Finance Act of 1914.

The book is commendably free from typographical errors; but a line appears to have been omitted on page 59, creditors is a misprint for debtors at the end of the first paragraph on page 331, and Britain is twice misspelled on page 462.

J. P. Day.

McGill University.

Some Aspects of the Theories and Workings of Constitutional Law. By W. P. M. Kennedy. (New York: The Macmillan Company. 1932. Pp. xiv, 142.)

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These stimulating lectures, delivered at Lafayette College in 1931, deserve a wide public. Written by a Canadian scholar who is thoroughly conversant, not only with the political institutions of his own country, but with those of the other self-governing units of the British Empire and of the United States, they are full of penetrating observations on a wide range of subjects.

In the first lecture, Professor Kennedy states with singular clarity a social theory of the state and of the law, and enters pleas for recognition of the state's liability in tort and for thorough sociological inquiry before the enactment of new law. The second lecture is a survey, in the light of recent historical research, of the development of the idea of equality among the members of the British Commonwealth of Nations. The novelty of the doctrine of parliamentary sovereignty in the eighteenth century—an idea which has escaped some scholars—is presented clearly by Professor Kennedy, and an interesting parallel between the legal theories of the Empire and generally accepted economic theories is pointed out. The third and fourth lectures, which are a discussion of salient features of Canadian government, contain many illuminating comparisons with American constitutional law and practice. Some of the topics covered are: principles of constitutional interpretation, advisory opinions, the distribution of powers, and devices to adjust federalism to modern social and economic conditions. The comparison of Canadian and American principles of federalism is a particularly interesting and valuable part of the book, but many American scholars would not agree that "today the provinces of Canada enjoy powers greater than those of the states of the American Union."

Several of the problems of Canadian politics pointed out by Professor Kennedy are duplicated in other countries. Every federal constitution is being strained to meet current social problems, and everywhere the relation between the expert and the amateur in administration raises difficulties. The Canadian problems of "senate reform," cabinet dictatorship, and minority representation are matters of concern in Great Britain and other countries as well.

JOSEPH R. STARR.

University of Minnesota.

American National Government. By SAMUEL PETER ORTH AND ROBERT EUGENE CUSHMAN. (New York: F. S. Crofts and Company. 1931. Pp. xi, 766.)

The addition of a volume to the already large list of textbooks on the American political system for the use of college classes would seem to call for explanation. Justification for his book, Professor Cushman

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suggests, is to be found in "the emphasis which it places upon constitutional development and interpretation and in the somewhat more detailed and concrete treatment given to the problems of government, politics, and constitutional law with which it deals." If this were all that could be said in support of the book, it might be replied that these phases of the American system of government have been treated quite fully in other texts. Professor Cushman is too modest; the seven-hundred-odd pages in which he and the late Professor Orth have set forth the subject of American national government not only represent a greater emphasis upon constitutional development, but also create a new type of textbook for which there is a growing need.

The teaching of American government and politics has undergone great improvement in recent years. This has been due in no small measure to the more efficient textbooks on the subject which have appeared. Discarding the descriptive method, writers have undertaken to deal with the realities of the American political system by the inclusion of constitutional interpretation and the influence of political parties. The result has been an undue expansion of the size of textbooks until they have assumed the proportions of books of reference.

The utility of the encyclopedic textbook, especially in introductory courses, is at present undergoing challenge. Briefer accounts in which only the most important facts are assembled are being used to advantage in conjunction with books of readings. The student whose chief field of interest lies outside political science is better served if he is not confused by a mass of detailed information. But whatever gains accrue from the briefer and more concise texts, they are not adequate for the special student of American government. His needs are not met by omission and condensation, but by increasing the amount of information and broadening the scope of the subject as at present set forth in the available textbooks.

One point the brief textbooks and that of Orth and Cushman have in common—both require teachers duly qualified by study and training in charge of the instruction. A supposed advantage of the conventional textbook has been the facility which it afforded the inexperienced, and sometimes incompetent, teacher in presenting the subject. Teachers as well as students have too often been content to rephrase the statements of the textbook and call it a discussion. Just as the use of the simpler manuals compels the teacher to turn to current literature for illustrative materials, the book of Orth and Cushman will demand a well-stocked mind to clarify and aid the student to assimilate the wealth of data which it presents. It is not a textbook for the use of the inexperienced teacher.

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It seems altogether likely that the introductory course in American government and politics, based upon the conventional textbook must be abandoned and replaced by two distinctly different courses. One of these will undertake to point out the essentials of the American political system for those students who are organizing their cultural training about a center of interest other than political science. The other will seek to lay, in the study of American government, the foundations of a scheme of political studies to be pursued in the later years of college. For a course of the latter type, the book of Orth and Cushman is admirably adapted.

Before his death, Professor Orth had completed the introductory chapters of the book, which deal with the formative period of American political institutions, and the chapters setting forth the machinery of the executive and legislative departments. Professor Cushman made some alterations and additions in these chapters, necessary to bring them up to date, and wrote the remaining chapters, including those on the courts and the powers of Congress. Although the style of the two authors differs somewhat, the interest of both men in the constitutional aspects of American government insures unity of treatment.

In a treatise of this size, it is inevitable that some statements should be made that are confusing. In view of the action of Congress in 1802 abolishing a court and legislating out of office the judges, and the threatened revival of the precedent in 1913, it seems too much to say that a judge "is completely protected in his independence as long as he is not guilty of misconduct" (p. 498). The statement (p. 561) that "the total number of state statutes held unconstitutional by the Supreme Court would number over six hundred" apparently does not take into account the very large number of statutes throughout the states that may fall as the result of a decision declaring an act of a single state legislature unconstitutional. But it would be unfair to emphasize the few inconsistencies in statement that occur. The work has been well done, and the book undoubtedly stands as the best treatment of the subject that has thus far appeared.

WILLIAM SEAL CARPENTER.

Princeton University.

The Administrative Control of Aliens; A Study of Administrative Law and Procedure. By WILLIAM C. VAN VLECK. (New York: The Commonwealth Fund. 1932. Pp. ix, 260.)

This valuable work, prepared by the dean of the George Washington University Law School under the auspices of the Legal Research Committee of the Commonwealth Fund, relates principally to the methods

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applied by administrative officers in the enforcement of the statutes of the United States governing immigration and the rules prescribed in pursuance thereof by the commissioner-general of immigration under the direction of the Secretary of Labor.

After setting forth in his first chapter a brief but fairly comprehensive history of the immigration legislation of the United States, and furnishing in his second chapter a concise statement as to what laws were at the time of writing in effect and the administrative machinery of the Department of Labor and the immigration field service by which the laws are applied, the author devotes Chapter III to an extensive study of the exclusion process, and Chapter IV to a similar study of the expulsion process. Chapter V relates to judicial review of the decisions of administrative officers. The concluding chapter contains a résumé and suggestions for amending the existing laws and rules governing immigration, with a view to eliminating certain evils inherent in, or made possible by, them.

In Chapter III, the author does not criticize the exclusion procedure severely, although he expresses the view, both here and in Chapter V, that the boards of special inquiry should be furnished with clerks, interpreters, etc., so that the members might devote themselves entirely to their judicial function. He decries the tendency of the boards to "pass the buck" to the Secretary of Labor by denying admission in difficult cases, with the idea that such denial will be overruled if found to be unjustifiable (p. 215). He also criticizes the tendency among immigration officials to give a very broad, and sometimes fantastic, construction to the provision of section 3 of the act of 1917 for the exclusion of aliens "likely to become a public charge." He gives various examples of decisions involving what he considers improper construction and application of this provision, and observes that it "is used as a kind of miscellaneous file into which are placed cases where the officers think the alien ought not to enter but the facts do not come within any specific requirement of the statutes" (p. 54). There is often a tendency to "exclude on suspicion," without substantial evidence to support it; and an exaggerated desire to exclude sometimes seems to warp the judgment of immigrant inspectors, even with regard to cases of persons claiming the right to enter as citizens of the United States (pp. 63, 64). Fortunately, as the author shows, unfair decisions by the port authorities are frequently overruled by the Secretary of Labor.

In his chapter on the expulsion process, the author is even more severe in his criticism of over-zealous immigrant inspectors, especially in stretching the "public charge" provisions to justify expulsion of aliens deemed "undesirable," although they may have resided for years in this country, worked diligently, and obeyed the laws. Numbers of cases are men-

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tioned in which the principal offense of the expelled person was that he or she had become impoverished, ill, or insane, and had thus become, sometimes temporarily, a "charge" on the community. The indications are that the immigrant inspectors frequently recommend deportation in these cases upon the belief that if their decisions are clearly unjustified, they will be disregarded by the Secretary of Labor—another resort to the expedient of "passing the buck." Fortunately again, in these cases, arguments of reasonableness and humanity are usually found to prevail in the Department of Labor, and the recommendations for deportation are not followed by issuance of warrants therefor. The author does not deal at great length with the expulsion of anarchists and other radicals, but calls attention to some of the difficulties inherent in it (pp. 39, 131, 139).

Of genuine interest is the discussion, in Chapter V and elsewhere, of the ways in which persons ordered to be excluded or deported as aliens inadmissable or subject to expulsion are frequently able to get their cases before the courts, notwithstanding the rule that administrative decisions upon questions of fact in immigration cases are ordinarily regarded as final. In this connection, the author quotes (pp. 157-158) from the outstanding opinion of Mr. Justice Harlan in the decision of the federal Supreme Court in the Japanese Immigrant Case (189 U.S. 86, 100). He also has a good deal to say about the decision of the same court in United States v. Ju Toy (198 U.S. 253), to the effect that a person claiming the right to enter the United States as a citizen thereof cannot, in case of an adverse finding by the administrative officials, get his case into a court of law, at least where there has been no denial of a fair hearing, although it is possible for a resident alien to do so when deportation proceedings have been instituted against him. He recommends that a resort to the courts should be made possible by legislation with regard to any case in which a person claims the right to enter as a citizen and submits substantial evidence of citizenship.

Dean Van Vleck's recommendations for changes in the procedure in immigration cases, set forth in the last chapter, are well supported by his previous arguments and citations of typical cases. He recommends that the law be amended to provide for appeals to the courts in any cases of resident persons ordered to be expelled, although he admits that it would not be practicable to extend this right generally to non-resident aliens applying for admission and making no claim to United States citizenship. In the event that the desired provisions for resort to courts of law cannot be obtained, the author makes certain recommendations for improving the machinery and procedure for expulsion. In particular, he recommends statutory authorization of the board of review and provisions under which the procedure before the inspectors may be improved.

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Few, if any, informed persons who have the future welfare of the United States at heart would recommend a relaxation of our present laws restricting the immigration of aliens. But as to the expulsion of aliens already in the country, reforms are evidently needed, with a view to having the laws carried out with due regard to the dictates of justice and humanity. Dean Van Vleck's work should be of great value as a guide in the much-needed reform of the laws governing deportation. It is most fortunate for the government to have the benefit of such studies as this and the recent work by Professor Clark on *Deportation of Aliens.* Dean Van Vleck expresses acknowledgment of the courtesy of officials of the Department of Labor in facilitating his investigations. It has always appeared to the reviewer that such informal coöperation between government officials, who are usually occupied almost to the limit of human endurance with official duties and naturally consider problems from the official viewpoint, and professors in our institutions of learning, who usually have greater opportunities for special studies and are not subject to official limitations, is likely to be mutually beneficial.

RICHARD W. FLOURNOY, JR.

Washington, D.C.

The Populist Revolt. By JOHN D. HICKS. (Minneapolis: The University of Minnesota Press. 1931. Pp. xiii, 473.)

The Populist Revolt sets forth a chapter of American history, if not perhaps in definitive fashion, at all events with a surer understanding and more scholarly scrutiny of its significance than has been made heretofore. The author has used to excellent advantage the wealth of material that he has been collecting over the past decade or so and presents a well conceived and proportioned study of an important period.

Depression and discontent in the nineties brought the farmers together in protest against the policies of the major parties. "We voted with our party no matter where it went; we voted with our party till we haven't a cent": it was with sentiments such as these on their campaign banners that the western farmers set about building up a party of their own. They could harmoniously join in singing:

> "The railroads and old party bosses
> Together did sweetly agree;
> And they thought there would be little trouble
> In working a hayseed like me."

The Populist philosophy the author reduces to two fundamental propositions: "one, that the government must restrain the selfish tendencies of those who profited at the expense of the poor and needy; the other, that the people, not the plutocrats, must control the government." It

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was chiefly through the Farmers' Alliance in the South and the People's party in the West that these doctrines, together with the specific reforms for their realization, were spread. The leaders were persuasive speakers and in several cases individuals of extraordinarily picturesque and striking character. "Sockless" Jerry Simpson, Ignatius Donnelly, and James B. Weaver were powerful orators of revolt. Mrs. Mary Elling Lease, who stumped the state of Kansas urging the farmers to "raise less corn and more hell," and the diminutive Mrs. Annie L. Diggs were but two of the group of women who did effective work in arousing the farmers.

Professor Hicks points out the significance of the frontier background in the West and indicates the effect of post-war conditions upon agricultural conditions in the South. He explains the grievances of the farmers and shows how they organized and participated in the campaigns of the nineties to win their aims. The fusion with the Democrats in 1896 is discussed. Bryan is regarded as the product of Populism. "We put him to school," remarked Ignatius Donnelly, "and he wound up by stealing the school books." The Populist party is traced to its death after 1900.

Despite the party's relatively brief existence, the author states that populistic doctrines showed "an amazing vitality." Many populist reforms, though once despised, triumphed in the end. This is true, Professor Hicks points out, not merely with regard to governmental reforms, but with reference to economic policies as well. Even upon the subjects of banking and currency, "the old-school Populists could think about as straight as their opponents." In due time, "the Populist diagnosis was accepted, and the Populist prescription was not wholly ignored." This third party served to break down the intense partisan loyalties following the Civil War and exerted a decidedly liberalizing effect upon popular government. The Populist movement is fortunate in its historian.

E. PENDLETON HERRING.

Harvard University.

The Public Papers of Francis G. Newlands. EDITED BY ARTHUR B. DARLING. (Boston: Houghton Mifflin Company. 1932. Two volumes. Pp. vi, 434, 426.)

These two volumes contain copious selections from the public papers of Francis G. Newlands, senator from Nevada from 1903 to 1917. Most of the selections are to be found in the *Congressional Record,* others appear in various magazines. The format of the volumes is tasteful, attractive, and modest.

The arrangement of the material is topical rather than chronological, the purpose being to portray the full sweep of the Senator's thinking on

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each of the public problems presented. Such were those concerning silver coinage, irrigation, conservation, imperialism, interstate commerce, the regulation of trusts, the control of waterways, and the rights of the wage-earning classes. The selections are held together by explanatory material and foot-notes contributed by the editor.

The topical arrangement of the material is indubitably the most useful for the student of recent American history. It is inevitable, however, that there should be much repetition, so that the reader's interest is dulled and his attention diverted. In the nature of the case, therefore, these volumes will serve mainly as reference books, but reference books of a very useful sort.

The intelligent and long-continued attention which Senator Newlands devoted to such questions as reclamation, interstate commerce, and industrial relations is well known and deserves the careful study which Mr. Darling has made. Moreover, Senator Newlands was frequently on the losing side of public questions, and a study of his point of view enables the reader to catch, more clearly than before, the fact that public questions now long since settled were far more difficult than appears in the light of later times. Any student, for example, can demonstrate glibly the heretical quality of the demand for the free coinage of silver. He would not be quite so glib if he should read the arguments of Mr. Newlands presented in the first volume of these papers. Equally strong are the speeches denouncing the "taking of Panama," against President Roosevelt's Santo Domingan policy, and against the repeal of the Canal Tolls Exemption Act.

This reviewer is of the opinion that Mr. Darling would have been wise to give precise foot-note references to the sources of every document quoted. In some cases, even where the quotation comes from the *Congressional Record* and where the date is given, the volume and page reference would be useful. In other cases, the student who desires to consult the original source would find it difficult to proceed.

CHARLES R. LINGLEY.

Dartmouth College.

The Federal Trust Policy. By JOHN D. CLARK. (Baltimore: The Johns Hopkins Press. 1931. Pp. 298.)

The title, *The Federal Trust Policy,* accurately describes the scope and nature of a volume which presents a careful and scholarly study of the history of the policy—the maintenance of conditions of competition as the basis of protection to the consumer and as an incentive to progress—that underlies the Sherman Act and related regulatory legislation. The

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Interstate Commerce Act is described as the first legislative manifestation of this policy, its fundamental purpose being to impose control upon competitive practices of industry, specifically upon unjust discriminations by railroads which tended to destroy "the natural and fair competition of commerce and trade." Subsequently, the Sherman Act, passed at a time when Congress and the general public were largely indifferent, applied the policy of preserving competitive conditions to trade and industry generally; it remained largely ineffective until the Roosevelt and Taft administrations, when it became an aggressive weapon in the dissolution of trusts of all types; and it has since become the generally accepted foundation of the federal government's relations to trade and industry, and has remained fundamentally unchanged for forty years. The various proposals for amendments are appraised, particular attention being devoted to the Roosevelt and Wilson administrations.

It is one of the unique features of the present work that, with regard to each period in the evolution of the federal trust problem, the prevailing state of opinion in Congress and the courts, among economists and political scientists, and among the public generally, is presented; and the literature—official, scientific, and popular—is carefully assayed. Relatively little attention is given to the multitude of cases arising under the Sherman Act and its amendments. The author is of the opinion that the anti-trust statutes have been successful in the maintenance of competitive conditions, without preventing all combinations and without rendering competition "destructive." He expresses the belief that the "underlying policy of competition is superior to any alternative policy," and looks with disfavor upon recent proposals to modify the policy—unless it be in the natural resource industries.

The book's style is clear and vigorous, and its unified character renders it a valuable and timely presentation of the essentials of our federal trust policy for the lay reader; while its fruitful delving into the fundamentals of an important state policy makes it equally significant for the student.

IRSTON R. BARNES.

Yale University.

The Spirit of World Politics. By WILLIAM ERNEST HOCKING. (New York: The Macmillan Company. 1932. Pp. xiv, 571.)

Of the making of books there is no end, but there are few of them which say things that really needed to be said. To the present reviewer, at least, Professor Hocking's attempt to analyze and determine the spirit of world politics is among these few. To a generation deeply troubled in spirit, at once materialist and idealist, muddling through

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with a succession of none too happy compromises, Professor Hocking seeks to point out the primacy and universality of ethical values and the necessity of basing action firmly upon them.

It is in this insistence on "putting first things first" that the peculiar distinction of this book lies. Taking as its point of departure the problems of Egypt, Syria, and Palestine—areas to which the author has recently paid more or less extensive visits—it attempts the difficult task of combining a realistic view of their situation and potentialities with an estimate of the ethical postulates that must guide future action in these and similar "backward" countries. Beyond this, it ventures far afield—perhaps too far afield—into such general problems as the applicability of the moral code of the individual to the state and the rôle of the League in building a world political ethics.

It is impossible here to go into the details of Professor Hocking's discussion of the problems of the Near East beyond noting that, in a style often strongly reminiscent of Carlyle, he has furnished a vivid and racy picture of its recent past. Of the potentialities of the Arab world he has little doubt. He speaks of it as having been under a political blight for centuries, the removal of which leaves the road clear for a new renaissance which is already under way. The great present question is as to the attitude which the Western world will adopt; we have the power to promote or to thwart the new development. And Professor Hocking is by no means unready to draw up his indictment of the attitude and action of the Western Powers in the last half century, and particularly since the War: "All this absurd passivity in the presence of the moral issues of expansion must be recognized for the despicable thing it is." As the author suggests, it is no slight matter that the appearance of the advanced world in backward areas should so frequently and in so many respects be a curse instead of a benefit.

The central problem of the book is the effort to arrive at morally acceptable standards in the infinitely complex clash of imperialism on one side and claims to national self-determination on the other. How are we to determine when a dependent people is ready for self-government, when this people itself and the world community at large will truly benefit from the relaxing of previous ties? It is obvious that no precise formula, readily applicable to radically different situations, can be devised to answer these questions, but Professor Hocking's suggestions are peculiarly interesting at a time when the League, largely through the instrumentality of the Mandates Commission, is attempting for the first time in world history to find a constitutional solution, so to speak, for a problem which has hitherto been dealt with normally in terms of war.

There are many lesser features of the book which invite discussion—

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such, for example, as the sharply pointed contrast between imperialist and individual views of property rights and the critical appreciation of the mandates system. But its greatest virtue lies in its straightforward demand for the reconciliation of ethics and politics. The actions of men, Professor Hocking insists, are determined by their minds, and those minds must take their standard from a moral code which lays down the same injunctions for the West and for the East, for the private citizen and for the statesman. It must be a world which is visioned as a whole, yet built up from "the destinies of unique lives," to each of which is assured the highest possible degree of self-realization.

RUPERT EMERSON.

Singapore.

The Exchange of Minorities: Bulgaria, Greece, and Turkey. By STEPHEN P. LADAS. (New York: The Macmillan Company. 1932. Pp. xi, 849).

One of the heroic, if extreme and but partially successful, ways of solving the problem of minorities is the exchange of minorities. It is dealt with very successfully in this publication. The whole volume shows much evidence of personal study of the project in the countries concerned. In addition, the major portion of the book is based on hitherto unpublished documents of value, some of them being included in the appendix.

The author explains in detail the steps leading to the conventions providing for the exchange of minorities, including a short historical background; he then examines the execution of the conventions, the machinery used for the appraisal of and the payment for properties of the exchanged populations, the settlements of the exchanged minorities, and, finally, the political, social, and economic consequences of the exchange.

The completeness of the volume is somewhat marred by the fact that the author has not fully covered the developments after the end of 1930. But this study is the best treatment of the subject in the English language. The style is somewhat heavy, probably an unavoidable characteristic of technical discussions of this type; it, however, undergoes a marked change in the concluding chapter, which is a splendid summary of the major internal and international problems of the Balkan countries and Turkey. The maps, diagrams, and bibliography add to the usefulness of the volume.

The book was published under the auspices of the Bureau of International Research of Harvard University and Radcliffe College, which should be congratulated for supporting the study—the more so because studies of the problems of south-eastern Europe and Turkey have so far been somewhat neglected by our serious scholars. Many, or rather most, of

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the books from that part of the world have been of a propagandist nature. Dr. Ladas is an exceptionally scholarly craftsman, and his work provides us with a well-balanced judgment.

JOSEPH S. ROUCEK.

Centenary Junior College,
Hackettstown, N.J.

International Legislation. BY MANLEY O. HUDSON (Washington: Carnegie Endowment for International Peace. 1931. Four volumes. Pp. cxvii, 3218.)

Just as there has been an increasing dependence on legislation in national life to adjust the rules of a rapidly changing society to new conditions, so in international life there has been the same response to the same condition. Under the urge of economic and social necessities, notably the remarkable improvement in means of transportation and communication of intelligence, the nations have developed the habit of laying down in common the regulations necessary to secure an organization of world affairs which will enable the world society to carry on its business under new and changing conditions. This development is not only notable in the field of the communication of intelligence, in the organization of radio, telegraph, and, most complete of all, in the Postal Convention, under which the postal territory of all the countries in the Union, practically all of the countries in the world, is made a single postal territory, but it also extends into many fields of business and administration.

The rapidly increasing development of international laws in the field of business and administration has developed the need for the expert, as apart from the diplomat, in the preparation for, and in the negotiation of, these technical arrangements. Representatives of states at the gatherings which prepare radio or railroad conventions are more and more technical men, and the preparation in different states for the conferences is falling into the hands of the technical experts who understand the subject. Furthermore, the rules regulating railways, air navigation, and posts cannot remain static. The industry rapidly changes with changes in technique and with new developments. The international society has responded to this need by the institution of recurrent conferences at which the experts recast the conventions in whole or in part, just as committees of Congress are constantly amending important legislation to keep it abreast of the times. The international organization has even developed to the point of having regulations resembling administrative regulations which can be changed, in some cases, by less than a majority of all the contracting states and in a very summary way.

This important development has recently been attracting attention, but the materials necessary for its study are widely scattered in different

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treaty series and other publications, so that the way of the scholar was rough and tortuous. This way has been greatly smoothed and straightened by this important contribution by Professor Hudson. He and the Carnegie Endowment for International Peace have put students of international organization and international law under a heavy debt by the publication of this great collection of treaties.

Professor Hudson has begun his collection with the period after the war. As he remarks, the organization of the League of Nations and the International Labor Office have spurred on a movement already well under way and have provided a convenient means for the preparation and conclusion of international legislation. The size of the task can be judged when one considers that the collection from 1919 to 1929 contains 229 conventions, and any scholar who has endeavored to check up on conventions covering a particular subject will appreciate the painstaking labor which has gone into the making of these volumes. The conventions are arranged chronologically, and an additional subject list makes it easy to find references upon any subject in which the reader is interested. Professor Hudson has not printed any of the treaties prior to the war, but he has prepared a list of conventions similar to those printed, beginning with 1864 and running down to 1914, with citations of the sources where the treaties are to be found.

Useful aids to the user of the volume are the list of states which have ratified or adhered to the different conventions, and the bibliography, giving not only the original sources, but also the titles, of articles and books referring to a particular convention. The conventions are given in English, with accompanying texts either in French or in the alternative language in which the convention was drafted.

Professor Hudson has preceded his collection of texts with a commentary in which he discusses the act of international law-making, which, as he truly says, "has come to be a process quite as important in the development of the law of nations as administration or arbitration or adjudication" [p. xiii]. He calls attention to the differences between these conventions and ordinary legislation, pointing out that there is no international legislature and that the treaties depend on the consent of the different states for their validity. The reviewer, however, observes that there is a compulsion on the states to ratify many of the treaties arising from the economic necessities of their own people, so that it is not the arbitrary will of statesmen, but the urge of economic interests, which forces a government into such conventions, for example, as that creating the Postal Union or providing an international system of weights and measures. These conventions truly regulate the affairs of an international society.

Any reader of the book will observe the great number of these con-

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ventions appearing annually and the frequency with which they are amended. Such a collection will be of peculiar value if it is kept up to date, and it is to be hoped that the Carnegie Endowment and Professor Hudson will continue their service to scholarship by arranging for periodic supplements for this purpose.

J. P. CHAMBERLAIN.

Columbia University.

International Government. By CLYDE EAGLETON (New York: The Ronald Press Company. 1932. Pp. xx, 672.)

Some six years ago, at the Second Conference of Teachers of International Law, the author proposed a course in "International Government," and the present volume contains the results of his practical experience. It represents an attempt to lay emphasis upon the organization and institutions of the international community, and at the same time it surveys the fundamental principles of international law and discusses the chief problems of a political character with which international society is confronted. International government, is, as the author explains, narrower than international relations, in that it avoids economic and non-political factors in international life, and on the other hand it lays less stress upon technical legal rules than is the case in the traditional text on international law.

The author draws a very suggestive analogy between his approach to international government and the attitude of the usual textbook on American government. The use of the title, he believes, is justified on the ground that international government is "the machinery through which states put into operation international law," and that if we are justified in using the term "international law" in spite of the fact that there is "no super-national authority, no super-state," we are justified in describing the machinery through which that law is applied as "government."

The five parts into which the volume is divided deal successively with the community of nations, describing the history of the community and the nature of international law; membership in the community of nations, including the rights and duties of members and the jurisdiction of states; the machinery of international intercourse, including international administration and legislation and the pacific settlement of international disputes; the modern organization of the community of nations, including the League of Nations system and the Permanent Court of International Justice; and lastly, the control of war through the agencies of the League of Nations, disarmament, the Pact of Paris, and the alteration of the old law of neutrality. So comprehensive is the volume that few items in the whole range of interna-

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tional law escape mention, and reading lists and foot-notes direct the student to materials for further study.

As the title of the volume would indicate, Professor Eagleton is not afraid to use terms which express a faith in the continued development of international law into a more logical and orderly system. He has definitely discarded the "family of nations" for the "community of nations;" he refers to the "collective responsibility" of the nations as a body, as opposed to the former system of neutrality; he accepts the term "international legislation" to describe the multilateral conventions by which new rules of international obligation are put into effect; and he puts under the head of "international federation" both the League of Nations and the lesser regional groupings that have been entered into or proposed in recent years. Showing the same tendency is the author's analysis of the "present problem of neutrality," in which the breakdown of the old system of neutrality in the face of modern conditions is pointed out, and also the need of a new understanding of the responsibilities of community life among the nations.

Professor Eagleton's volume is altogether commendable and reflects great credit upon the author for his orderly statement of the subject-matter and his clear presentation of its problems. It is admirably suited for introductory courses, where more advanced work can be taken up later, and for the "single informative course," as the author describes it, which many instructors in history and government may wish to offer where more technical work is not contemplated. With such excellent handbooks as are now available, it is to be hoped that even more rapid progress may be made in extending the study of international relations to our smaller educational institutions where the instruction must be assumed by teachers who are not specialists in the field.

CHARLES G. FENWICK.

Bryn Mawr College.

Progress in International Organization. By MANLEY O. HUDSON. (Stanford University: Stanford University Press. 1932. Pp. x, 162.)

In this small volume, Professor Hudson examines the historical background of international organization, the influence of the World War, and the establishment and operation of post-war international organization, with additional attention to the recent development of international law, the problem of peace, and the position of the United States in reference to the whole matter. The treatment is necessarily brief and general and the attitude largely a personal one. Few technical problems, whether of organization or procedure, can be treated here. But for a compact, balanced, and suggestive summary of the situation the little volume is at the present moment unexcelled.

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The reviewer would disagree with the explanation given in Chapter IX of why the United States did not enter the League in 1920, although not with the remainder of the chapter and its admirable description of our subsequent relations with the League. In essence, Professor Hudson explains the action or inaction of the United States in 1920 by the theory that special groups (Irish, Germans, Republicans) opposed the treaty of Versailles and the Covenant, while no one upheld the general interest which lay in ratification, and that the former won over the latter—though it is admitted that "We did not make a decision. We drifted into isolation." The explanation is too general. The fact is that while large majorities in the country and in the Senate in 1918, in 1919, *and in 1920,* favored American entry, a vicious minority of nationalists, pacifists, and Anglophobes and Germanophiles, swollen in numbers by Wilson's seeming intransigence, captured a one-third veto in the Senate, scared the Republican party and its responsible leaders into silence, inaction, and even denial of their historic faith and recent pledges, and, with the aid of the Colonel McCormicks and the William Randolph Hearsts, foisted a misrepresentation of the election of 1920 upon the public and the White House alike.

PITMAN B. POTTER.

University of Wisconsin.

Is Germany Finished? BY PIERRE VIENOT. (New York: The Macmillan Company. 1932. Pp. 141.)

"Those who wish to know Germany must do more than take a train to Berlin. They must cut themselves for a while from France. All answers to French questions on the lines laid down in France are inadequate, if not false. Germany must be studied from the inside. One needs self-forgetfulness and disinterestedness."

M. Vienot, who spent six years in Germany as the representative of the *Comité Franco-Allemand d'Information et de Documentation.* fully practices what he preaches. Apart from being welcome as coming from a Frenchman, his little book thus proves a valuable interpretation, concise but thoughtful, of the German crisis. M. Vienot insists that the German people is passing not merely through an economic crisis, but also through a *Kulturkrise*—that *Kultur* which was peculiary embodied in the bourgeoisie of the provincial capitals and rooted in the stolid, respectable habits of a life of steady work and steady leisure. Those roots have been torn by material cares, but still more by the upheaval in political sentiment caused by the loss of faith in the middle-class order.

The first effect has been a "vast bewilderment," a sea of uncertainty. Among the young, this has led to a change in values. They put their

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faith no longer in those virtues of prudence which the modern world seems to discountenance and to render illusory, but rather in energy and courage and sincerity for its own sake—an attitude which brings them close to Nietsche's precept of "living dangerously." More generally, the crisis of the middle-class has brought with it a reaction against the critical spirit and the intellectualism which imprison the individual within himself. "The atmosphere of liberty has become so rarefied," says M. Vienot finally, "that he can no longer breathe it." He demands new lines, and above all tangible, natural, and spontaneous links such as those which unite the members of a group. The whole of modern Germany asserts the intrinsic moral value of this group life, and adopts the virtues which favor it: obedience, loyalty, devotion." That is, finally, why the Republic has led, not to the development of an individual civic sense, but to a belief in *Führung*. "If the republic is stagnating, that does not mean that the pre-war régime still exercises a real power over the German mind. It means rather that an individualist democracy in a country where middle-class civilization is in a state of material and moral crisis does not provide a political expression adequate to the realities which outstrip it."

Not unnaturally, that uncertainty, that loss of control over material conditions, easily turns to despair and violence. The sudden and sweeping rise of the National-Socialist movement expresses in its crudest form the torment of the German people. It is hardly a political fact at all. In the tone of confused and contradictory absurdities which serve as the banner of this movement, where is there any real program?

DAVID MITRANY.

London, England.

Political Economy of Juan de Mariana. By JOHN LAURES. (New York: Fordham University Press. 1928. Pp. xi, 319.)

Robert Bellarmine, De Laicis, or The Treatise on Civil Government. EDITED BY KATHLEEN E. MURPHY. (New York: Fordham University Press. 1928. Pp. 83.)

Political Theory and Law in Medieval Spain. By MARIE R. MADDEN. (New York: Fordham University Press. 1930. Pp. xv, 197.)

Unpopular Essays in the Philosophy of History. By MOORHOUSE F. X. MILLAR. (New York: Fordham University Press. 1928. Pp. xiii, 214.)

These four beautifully printed volumes are the work of members of the faculty of Fordham University, and are of considerable interest to students of history and of political theory. Father Laures, in discussing the ideas of the famous Spanish Jesuit, Juan de Mariana, devotes one third of the volume to his political doctrines and the remainder to his economic ideas. While the writings of Mariana have been best

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known in connection with their justification of tyrannicide, and were indignantly criticized as conducive to the assassination of rulers, many valuable features of his doctrines have been overlooked. He gave excellent advice concerning the education and conduct of rulers, and contributed to the development of democracy; and his vast historical knowledge illuminated all his works. In his economic writings, especially in his discussion of money and finance, he developed important principles of economics two centuries before that study became an independent science. This volume makes a distinct contribution to the history of economic doctrines, and does much to place the political ideas of Mariana in their proper perspective.

Miss Murphy's translation of Bellarmine's *Treatise on Civil Government* places in the hands of students a convenient edition of that portion of his great work, the *De Controversiis,* which deals with the origin and basis of the state, the source of political authority, the rights and duties of rulers and subjects, and the relation between secular and ecclesiastical authority. Bellarmine follows Augustine and St. Thomas, contributing few new ideas; but his writings were an able defense of the Catholic point of view during the period of controversy after the Protestant Revolution. This volume is little more than a translation, but Miss Murphy promises to follow it with a full treatment of Bellarmine's place in the historical development of political theory.

Miss Madden's volume on the political theory and law of medieval Spain first traces the development of the theory of law and then discusses the administrative machinery—king, councils, Cortes, and municipalities—through which it was administered. The chief value of this interesting volume is its clear treatment of the connection between social, political, and legal ideas and institutions on the one hand and the background of Catholic religious thought and institutions on the other. Spanish political theory never quite separated theology from politics, and the political development and policies of medieval Spain can be understood only in their religious setting. Miss Madden attempts with considerable success to trace the complicated process by which Visigothic law, Roman law, and Catholic doctrines were fused in building up the great Spanish empire. Her conclusion is that the Spanish theory of government contained two main principles: that society was unified because mankind was unified in the one Faith; and that justice must be based upon order as determined by the Eternal Law.

The volume of Father Millar consists of a series of essays in which he attacks certain generally held beliefs that have come down through the Protestant tradition. Most of them deal with historical events or doctrines, which are reëxamined from the Catholic point of view. He attacks the idea that Protestantism contributed to the growth of liberty and

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democracy, and views the Reformation as a misfortune in that it substituted will for reason. He believes that present-day Protestant teachings constitute a direct attack upon civilization. The student of political theory will be especially interested in four essays entitled "Does the Majority Rule?"; "The Two Traditions of Liberty"; "American and English Liberty"; and "International Law." Father Millar believes that modern political ideas, particularly in the United States, have been debased and diverted from their sound historical development by their acceptance of the fallacious theories of the French Revolution.

RAYMOND G. GETTELL.

University of California.

The Origin and Development of the State Cult of Confucius; An Introductory Study. BY JOHN K. SHRYOCK. (Published for the American Historical Association. New York: The Century Company. 1932. Pp. xiii, 298.)

This book, as its title implies, is an historical survey. It deals more with the attitude of the Chinese ruling literati toward the system of the Confucian school than with the thought of that school itself. It is in no sense a defense or a condemnation of the philosophy and religion of Confucius, nor is it didactic in regard to what may be termed Chinese ethocracy. It pictures Confucianism at the time of the Master himself, 500 B.C., as merely one of the number of competing schools of thought, none of which stressed religion as much as philosophy, ethics, or politics. The most that can be said of the Confucian religion at this early time is that it accepted, in the main, the older nature worship of the Chinese and had respect for the sacrifices. But the attitude of Confucius himself was probably that of a skeptic.

As time went on, the Confucianists found themselves rivals of the Legalists in both theory and practice. They stood for provincial or local control against absolute centralized authority. As the imperialist unitary system became dominant, its advocates, as a defensive measure, persecuted the Confucian scholars. This in turn led to a sanctified honoring of the Master by those who assumed or were driven to his defense during the period of persecution, but even the most devout went no further in the development of the worshipping of Confucius than to reverence him as all Chinese reverenced their ancestors. It remained for later generations, after the Confucian literati had become the state rulers, and their system of governmental control through civil service examinations was perfected, to instil the worship of Confucius and make it, consciously or unconsciously, a stabilizing defense for the established order. Here again the ruling ones turn to heaven to perpetuate themselves!

The author establishes without doubt that which all students of Con-

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fucius maintain, that Confucius worship would have been unacceptable to Confucius himself. His aspiration for the honors of men were never higher than the honor granted teachers of men. He did, however, become, in the minds of all who studied him, the teacher of teachers, or as the Chinese themselves put it, "The Teacher of Ten Thousand Generations."

The book in no sense needs to be justified. It has a place in all libraries. It fulfills well what it purports to be. It is usefully annotated, though the manufactured book is proof positive that the author assumes that it was not made to be read. Notes are placed at the end of each chapter; in a chapter of nine pages, for example, there are forty-two valuable notes. The thoughtful reader who follows the notes loses his place and his patience so many times that the book can hardly be read with understanding.

ELBERT D. THOMAS.

University of Utah.

The Development of American Political Thought. By J. MARK JACOBSON. (New York: The Century Company. 1932. Pp. xiv, 723.)

This book represents a combination of general explanatory essays and documents covering the range of American political thought, the essays purporting to explain the geographic, economic, social, and cultural background of the periods and movements, and the documents to illustrate the writings of outstanding thinkers of each period. Such an attempted combination presents a difficult problem in this particular field. However, through his concise summarization of ideas in terms of their historical background and through his judicious selection of extracts, Dr. Jacobson has succeeded admirably in his task. Of special merit is the consideration of American thought in terms of and in relation to institutional development.

The treatment up to the Civil War follows generally accepted lines, while in the post-Civil War period, with its difficult problems of inclusion and exclusion, there is—in the excellent chapter on "Government and Economic Institutions"—a proper emphasis upon the assaults on *laissez-faire*. If the discussion of such matters as democracy might have been focused around more clearly presented or implied views of the concepts on the part of the writer, the explanation may be found in the author's approach, which is descriptive and objective. Making no pretense at an exhaustive analysis of the various topics considered, the book is well balanced and well written. Designed as a text, it should meet every requirement when supplemented as the author intended.

TAYLOR COLE.

Louisiana State University.

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BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

South Carolina During Reconstruction, by Francis Butler Simkins and Robert Hilliard Woody (University of North Carolina Press, pp. xiv, 610), is a welcome addition to the growing list of Reconstruction studies. Though somewhat less detailed in its treatment of politics than the well-known book by John S. Reynolds, it is calmer in tone and more judicial in spirit. The chapters on politics follow the familiar path through the attempt at restoration under President Johnson, military government under the Congressional Radical plan, the setting up of the constitution of 1868, the four Radical administrations of Governors Scott, Moses, and Chamberlain, the heated campaign of 1876, and the dual government which terminated with the withdrawal of federal troops by President Hayes in April, 1877. The chief contribution of the book is the account of the economic and social revolution which resulted from the change to free labor and the destruction of the old agricultural system. Share-cropping replaced gang labor on the plantations; the small town merchant and banker supplanted the seaport factor as the dispenser of rural credit; a new capitalist class began to rise; the races became more widely separated in the churches and, of course, in politics and the schools. The final chapter analyzes the effect of Reconstruction upon subsequent political, social, and cultural life in the state. The reader will note some chronological confusion in the narrative and an occasional typographical error. The format of the book generally, however, is distinctly pleasing. There are numerous illustrations and one map, an excellent bibliography, and a very satisfactory index.—CHARLES W. RAMSDELL.

At a time when so many hastily written, second-rate biographies are making their appearance, it is refreshing to read a book like M. A. DeWolfe Howe's *Portrait of an Independent: Moorfield Storey, 1845-1929* (Houghton Mifflin Co., pp. 384). The volume is written in a style which makes it a contribution to good literature as well as to a better understanding of important political movements of the last half-century. Moorfield Storey not only was one of the notable lawyers of his period, but he had a wide acquaintance among the leading statesmen and political figures of his day, with many of whom he disagreed on important public questions and policies. The student of government will find chief interest in that part of Mr. Howe's biography dealing with Storey's activities as a Mugwump; his undying opposition to American imperialism, and especially to the course of the United States government in the Philippines, Porto Rico, and Panama; and his vigorous espousal of the cause of the American negro. The career of Storey truly illustrates "the place

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and value of the independent in American life, both local and national." In the words of his biographer, who points out Storey's weaknesses as well as his virtues: "As a type, moreover, of the independent, thinking for himself, unswayed by consideration of passing popularity, an exemplar of independent thinking to others, he stood for a species of citizenship only the more needed in our civilization when the spirit of comfortable conformity rears highest its ominous head." Another excellent biography of a present-day leader, written by one who has established a reputation for work of this nature, is Ida M. Tarbell's *Owen D. Young: A New Type of Industrial Leader* (Macmillan, pp. xiv, 353). The student of political science will naturally find chief interest in the chapters dealing with "The Dawes Plan," "The Making of the Young Plan," and "The General Electric Develops a Labor Policy." There is also an interesting chapter in which Miss Tarbell analyzes the qualifications which in her opinion have contributed to Mr. Young's position of leadership. "Perhaps the most significant difference between him and his predecessors," writes Miss Tarbell, "is his outlook on industry. He seems to regard it as an institution with social, moral, and political relations, and to insist that its economics be adjusted to these relations." His "chief contributions to public life come from the free way he uses his mind, coupled as it is with his firm hold on social and ethical principles . . . No public man of our day, inside or outside of industry, is doing more to emphasize the necessity of training men intellectually and socially as well as technically for life."

STATE AND LOCAL GOVERNMENT

During the last few years, the legislature of North Carolina has passed a series of acts which have made important changes in the system of government of that state, especially in the redistribution of powers between the state and its local units and in shifting the tax burden. "More specifically, this new legislation resulted in the taking over by the state of some 45,000 miles of county highways, in more extensive state supervision and control of local government finance, and in the assumption by the state of financial responsibility for the operation of the public schools for the six months' terms required by the constitution." The program which has been "embarked upon involves the transfer to the state of what have always been regarded as purely local functions, as well as the adoption of more stringent central control over counties and cities, both throwing new light on the common concept of democratic government." These changes have attracted the attention of the other commonwealths, and also of students of state and local government. To meet the widespread demand for information regarding the reorganiza-

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tion, the Institute for Government Research of the Brookings Institution has issued an excellent study of *State Centralization in North Carolina* (pp. xi, 261), edited by Paul V. Betters in collaboration with A. T. Allen, Charles M. Johnson, Fred W. Morrison, and Charles Ross. The subjects receiving chief consideration are the state system of schools, the state highway system, state supervision of local finance, taxation and revenue systems, and state administrative reorganization. An appendix of over eighty pages contains the text of the laws on which the reorganization has been based. The Institute for Government Research has not only added to its prestige by the publication of this work, but has rendered a considerable service to public officials and to students of government who are interested in the solution of the financial problems confronting state and local governments during the present period of economic depression. Another study of interest dealing with one phase of a similar subject in a neighboring state is *Taxation in Virginia* (pp. xxv, 309), by William H. Stauffer, published by the Century Company for the University of Virginia Institute for Research in the Social Sciences. Like North Carolina, the commonwealth of Virginia has in recent years effected far-reaching changes and reforms in fiscal policies. In an illuminating and objective manner, Dr. Stauffer, who is economist for the state department of taxation, has explained the changes and described the system of taxation as it operates in the state and local governments. The text is supplemented by over 140 tables. Of special interest are the accounts of Virginia's plan for the separation of state and local sources of revenue, the system of business taxes, and the classification of property.

In the short space of some five hundred pages, Professor Niles Carpenter attempts in his *The Sociology of City Life* (Longmans, Green and Co., pp. 502) a survey of topics which have furnished material for specialized treatises on a hundred different subjects. City planning, urban religious life, poverty, crime, public utilities, population composition, recreation, city government—to mention but a few—come in for condensed treatment of considerable interest to the political scientist who wishes to look over the fence into the sociological back-yard. Given the limitations inherent in a text-book, Professor Carpenter has done a stimulating piece of work. That the book retains a genuine perspective amidst the wealth of detail is perhaps its strongest feature. The chapter on the impact of the city upon personality, for example, shows the social psychologist at his best. Unfortunately, such high praise cannot be extended indiscriminately to the occasional excursions into the field of government. It is doubtful whether any student of municipal government would recognize the light and shade—not to mention the alleged historical background—of the discussion of government and administration. To cite

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one example only, municipal administrative incompetence is assumed to be so general as to justify state centralization, and no recognition is given to the great strides taken recently in municipalities—possibly greater than in the states themselves.—E. S. GRIFFITH.

FOREIGN AND COMPARATIVE GOVERNMENT

The Birth of the German Republic, 1871-1918, by Dr. Arthur Rosenberg, translated by Ian F. D. Morrow (Oxford University Press, pp. x, 286), deals with a subject that has been treated by many other writers. But Dr. Rosenberg was a member of the Reichstag committee of inquiry into the causes of Germany's collapse in the World War, and as a member of that committee he was reporter for, though not an adherent of, the so-called "stab in the back" theory. As indicated in the title, Dr. Rosenberg rightly considers the political and social history from 1871 to 1918 as the essential background for the collapse of the old régime and the establishment of the Republic. *Thoughts on Germany,* by Richard von Kühlmann, translated by Eric Sutton (Macmillan, pp. x, 315), is announced as giving the point of view of a broadminded German, modern in the best sense of the term, who has for twenty-five years participated in important world events. For a diplomat of the pre-war period and a *Staatssekretär* of the Foreign Office (having concluded the treaties of Brest Litovsk and Bukarest), the author exhibits an unexpected broadmindedness. Chapters XXI-XXV report imaginary conversations between a German and a Frenchman, a Frenchman and an American, and a German and an Englishman. If all diplomats and ministers of foreign affairs of the pre-war era had shown the political insight and the spirit of international coöperation revealed in these chapters, the World War could not have happened. Another recent book on Germany is *The German Crisis,* by H. R. Knickerbocker (Farrar and Rinehart, pp. vii, 256). Diplomats and ministers of foreign affairs did not have such insight and such a sense of coöperation before the war; nor do they have much of it today. Hence the war, Communist Russia, Fascist Italy, and the German crisis pointing to the rule of National Socialism, followed by Communism, in Germany and who knows where! Mr. Knickerbocker, specialist on conditions in Russia, has turned specialist on conditions in Germany. *The German Crisis* does not make pleasant reading for those who consider the advance of National Socialism merely as a sign of a popular refractory mood, and Communism as a foolish though negligible bugaboo. The fact that more than one-fourth of the entire population is facing slow but inevitable starvation on a government dole reduced to about four dollars a month might convince the most callous reader that Germany is sitting on a powder barrel with enough powder in it to set all of Western Europe on

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fire. Mr. Knickerbocker is not an alarmist, but he dares to call a spade a spade.—J. MATTERN.

Waldemar Gurian, *Der Integrale Nationalismus in Frankreich* (Frankfurt am Main, pp. 131), is the first objective and detailed account of the Action Française movement and of the theories of its leader, Charles Maurras. The author points out that the importance of the Action Française lies not in its actual political influence, but in its thoroughgoing theoretical attack on the modern democratic constitutional state. "It must be recognized," he writes, "as the school which has, for purposes of propaganda, most successfully erected into a system all the arguments against parliamentary government and the liberal régime of public opinion." Maurras has indeed contributed no little to the ideology of fascism and of kindred movements; and in French intellectual circles he has won over to the royalist cause of *"le nationalisme intégral"* such notable figures as Jacques Bainville, Léon Daudet, Pierre Gaxotte, Charles Bénoist, and Franz Funck-Brentano. The group lost whatever political force it had obtained, however, when in 1926 and 1927 it brought on itself the condemnation of the Vatican. The author's discussion of the factors motivating this condemnation is especially noteworthy.—PAUL A. PALMER.

Manchuria: Cradle of Conflict, by Owen Lattimore (The Macmillan Company, pp. xvi, 311), and *Twenty Years of the Chinese Republic,* by Harold Archer Van Dorn (Alfred A. Knopf, pp. xiv, 309), are two of the latest books dealing with affairs in the storm area of the Orient. To Mr. Lattimore, "the underlying struggle in Manchuria is, and will be throughout our century, caused by the conflicting migration of cultures and people, and the effort of cultures to assert themselves over peoples." His book is a brilliant exposition, in epigrammatic style, of the cultural factors in conflict in Manchuria. His thesis is that Manchuria, while culturally Chinese, is politically self-conscious and that it exerts greater political influence upon China proper than is exercised upon it by China. He describes Liaoning and Kirin provinces as historically a "reservoir" of tribal invasions into the "Middle Kingdom," and he finds a persisting regionalism at work, even today, to supplant racial or national feeling in the immigrant Chinese. He cautions, however, against construing Manchurian regionalism "as a bias toward Manchurian autonomy or independence as Western societies understand those terms," since "no matter how effective the political autonomy of Manchuria at any given moment, China itself remains the focus of the life of the community. . . ." Written, in essentials, before the Japanese intervention of September,

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1931, the work is singularly free from bias and remarkably rich in important new material upon such topics as land utilization, types of and aids to migration, official and private methods of exploiting immigrants, and the functioning of soldiers, bandits, and opium. While comparatively slight attention is devoted to international jolting of the "Cradle," there is a valuable chapter on Japanese, Korean, and Russian immigration. Mr. Van Dorn's book is a frankly popular account of Chinese "progress" under the Republic, divided into five chapters which deal, respectively, with political, educational, religious, social, and economic advance.—HAROLD S. QUIGLEY.

In *The Conscription of a People* (Columbia University Press, pp. x, 206), the Duchess of Atholl, moved by sympathy for the down-trodden Russian peasants and workers, or perhaps alarmed for England's sake by Russia's industrial progress, attempts to make public the present condition of labor in Russia. The title and the grim paper cover with its three red robots against a dark background perhaps sufficiently characterize the book. One cannot help wondering about "sworn statements of refugees from Russia." That labor is not entirely voluntary, no one doubts. But a book which claims to tell the whole truth ought to do better than picture Russia as the home of 160,000,000 slaves. Much of the material is authentic and reliable, but the effect is spoiled by obvious straining to make everything appear at its worst.

Hitlerism: The Iron Fist in Germany, By "Nordicus" (Mohawk Press, pp. 243), gives a useful summary of the rise of Hitlerism and then lets the party speak for itself, with devastating effect. The author concludes that "a brief trial of Hitlerism would be a good thing for Germany. . . . So mediocre a person as Hitler directing the government from Berlin would be a tremendously revealing experiment." However brief, the experiment might nevertheless, in present conditions, leave a deep scar upon the culture of the country; and that would be a loss for the world at large.

INTERNATIONAL LAW AND RELATIONS

Three recent publications dealing with international justice are *The Hague Court Reports* (Second Series), by J. B. Scott (Oxford University Press, pp. xlvii, 220), *The Permanent Court of International Justice and the Question of American Adhesion,* by Charles E. Martin (Stanford University Press, pp. 48), and *Ten Years of International Jurisdiction,* by the Registry of the Permanent Court of International Justice (World Peace Foundation, pp. 74). The second series of the Hague Court reports contains the texts of the Hague Convention of 1907 for the pacific settlement of international disputes, and of the *compromis* and awards of

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the tribunals in the following cases: the Expropriated Religious Properties in Portugal (1920); French Claims against Peru (1921); Norwegian Claims against the United States (1922); and the Island of Palmas Case. The report of the commission of inquiry on the Tubantia Case is also included. The reports are given in English, with the original foreign texts in an appendix. In a short introduction, Professor Scott, discusses the origins of the various disputes and analyzes the awards. The pamphlet of Professor Martin is a brief in favor of adhesion by the United States to the Permanent Court. After tracing American policy toward the settlement of disputes by means of arbitration, the author stresses the advantages of judicial settlement as compared with arbitral settlement. The concise and orderly arrangement of this little book has the merit of presenting a complete summary of a controversial subject. *Ten Years of International Jurisdiction,* although not an official publication of the Permanent Court of International Justice, was prepared under the direction of the Registry. It describes the organization, jurisdiction, and work of the Court from 1922 to 1932. The judgments, orders, and advisory opinions are briefly stated. In the analysis of the various questions before the Court, cases are considered according to the method by which the Court gained jurisdiction of the questions: application, special agreement, or requests originating with the Council of the League of Nations. The text is given in both English and French.—CHESNEY HILL.

Professor R. B. Mowatt, who has already contributed much to the study of European diplomacy since 1815, has added to his list of books a small volume on *International Relations* (The Macmillan Company, pp. vii, 175). This concise study embodies the author's views of post-war developments in the relationships of members of a world community, in the light of earlier history. He refers briefly to the rise of nationality, the development of the international conference idea and its possibilities through the League channel, the slow but steady evolution in international organization and its culmination in the League of Nations. Finally, he treats briefly certain dominant world problems which have replaced the older "questions" of Poland, Italy, and Turkey in the concern of world statesmen. What he calls the "mechanics of peace" occupies a front place among these; he refers, also, in concise fashion, to disarmament, the Far East, and inter-governmental debts. These are world questions because, in his view, national communities must surrender their selfish individualism in the inevitable trend toward the realization of an international system.—A. E. HINDMARSH.

Disarmament and Security Since Locarno, 1925–1931, by John W. Wheeler-Bennett (The Macmillan Company, pp. 383), constitutes No. 7

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of the "Information Series" edited by Mr. Bennett since 1928. As source-books, these volumes have been highly prized. The present item continues two previous numbers in the series, but there is more writing by the author here than in other volumes, and while he maintains a remarkably objective and unjudging attitude, in the main he now appears to be speaking more openly and more emphatically as a devotee of one school of thought than might be thought proper in purely informational work. There are a good many quotations in the text and a few documents, but there is much more explanatory and interpretative writing than one would expect. As a source-book, the volume is open to criticism; as a restrained statement of the situation from the English pacifist point of view, it is admirable.—PITMAN B. POTTER.

The fourth volume of the Modern Series of John Bassett Moore's *International Adjudications* (Oxford University Press, pp. 600) covers materials relating to twenty-four cases before the mixed commission appointed under the Jay treaty of 1794. These touch upon neutral rights and duties involving contraband, blockade and continuous voyage, and the so-called neutrality proclamation issued by Washington on August 22, 1793. The complaints of the British in regard to American conduct were somewhat similar to those of the United States in regard to British conduct in the Civil War seventy years later. As secretary of state in 1793, Jefferson stated that it was the duty of a neutral nation to prohibit within its borders such acts "as would injure one of the warring powers"—even the departure of vessels equipped for war in the United States. Some of the positions taken in 1794 were reaffirmed to the benefit of the United States in the Geneva Arbitration in 1871. Jay's wisdom was evident in securing the aid of such counsel as Sir William Scott (Lord Stowell) and Dr. John Nicholl. Organizing the work and determining jurisdiction, procedure, and law to be applied by the Commission required high talent, and in these respects, as well as in the opinions and awards rendered, such talent is everywhere evident. The amount of new material and the method of presentation make this volume a remarkably valuable contribution, not merely to international law, but to the history of the period.—G. G. WILSON.

The International Joint Commission between the United States and Canada, established by the Boundary Waters Treaty of 1909, has long been awaiting a detailed study. A timely appearance, therefore, is now made by *The International Joint Commission,* by C. J. Chacko (Columbia University Press, pp. 431, map). The activities of the Commission are classified into those of a judicial, administrative, and investigative na-

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ture, with the bulk coming under the first heading. In dealing with these judicial activities, the author chose the topical method of approach as against the more natural and simple method of treating each case as a unit. On this account, one finds it difficult to get a clear picture of the cases as they are met and settled by the Commission. A greater emphasis upon the historical background of particular problems might have assisted in this process of clarification. Further, the long treatment accorded in the introductory chapter and elsewhere to other existing types of machinery for international peaceful settlement seems somewhat superfluous. On the whole, however, this is a careful and useful study which the student of international organization will hardly neglect.

The Carnegie Endowment for International Peace has published *Proceedings of the Fourth Conference of Teachers of International Law and Related Subjects* (pp. xii, 249). The fourth conference, held at Briarcliff Lodge, New York, October 10-17, 1929, included four round-table meetings to discuss the methods of teaching international law and relations, with special emphasis on suitable topics, and the function and training of teachers of these subjects, especially the value of practical experience in the fields of law practice, foreign service, and claims commissions. The four general sessions were concerned largely with problems of research in these subjects, problems of graduate and undergraduate curriculum, and the place of British and American prize law. Most of the problems are perennial but remain fundamental, and their examination contributes much enlightenment to the profession.—A. E. HINDMARSH.

Intended to illustrate "the real Japanese policy toward Manchuria and Mongolia," the five documents brought together in *Secret Documents Relating to the Japanese Policy Toward Manchuria and Mongolia,* edited by Tien Chang Hsu (Peiping: China Institute of International Affairs, pp. vii, 80), include chosen excerpts of a questionable nature. Three of the "documents" are copied from Chinese journalistic sources, and two are indicated merely as "disclosed" at the Washington Conference. The tone of the whole may be taken from the last—the so-called Tanaka Memorial—widely discredited here as fraudulent. *Manchuria in History,* by Li Chi (Peiping: Peking Union Bookstore, pp. 42), is a brief summary of the history of Manchuria, together with a convenient set of plates, maps, and tables. Beginning with the twelfth century B.C., and extending to the present century, thirty centuries are covered. The book is based on a larger work in Chinese, and is but a glimpse of what must be a scholarly work. The maps are excellent.—A. E. HINDMARSH.

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Alliance and Entente, 1871-1914, by George B. Manhart (F. S. Crofts and Co., pp. vi, 90), is a useful selection of readings from diplomatic documents and correspondence for a very introductory study of European relations.

POLITICAL THEORY AND MISCELLANEOUS

Dr. Wilhelm Bauer's *Die öffentliche Meinung in der Weltgeschichte* (Potsdam, pp. 403) is a contribution to the literature of public opinion which should be of particular interest to American political scientists. Our theorists of public opinion have, in the main, considered it with respect to its recent and contemporary American manifestations. The author of this volume, professor of history at the University of Vienna, views it as an age-old and world-wide phenomenon. He describes its character and significance in ancient, medieval, and modern times, and discusses in detail the relation of the newspaper at various stages of its development to the expression and formation of public opinion. He concludes that while all men in public life must learn how to recognize and deal with public opinion, the true statesman will, like Bismarck, ignore or transcend it when he sees it running counter to the real interests of the nation. The volume is splendidly illustrated and adequately indexed, and contains a useful bibliography.—PAUL A. PALMER.

American Public Opinion on the Unification of Italy, 1846-1861, by Howard R. Marraro (Columbia University Press, pp. xv, 345), is a conscientious though pedestrian analysis of American opinion toward one of the great nationalistic movements of the nineteenth century. It is based largely on a study of a wide number of New York newspapers and magazines, with a few from other cities, and includes also letters from Italy by scholars like C. E. Norton and G. P. Marsh. There are good summaries at the end of each chapter, an excellent index, and a chapter of conclusions in which Mr. Marraro sums up the motives which actuated the American attitude: sympathy with the "under-dog," which some one has called the new radical disease of *sub-caninitis;* hero-worship of men like Garibaldi and the natural tendency to sympathize with success; self-interested hopes for a greater American trade with a United Italy; "self-enhancement," that is, the approval of liberal or republican movements which seemed likely to glorify established institutions like those which Americans prize as their own; and religious bias, in which Protestants took sides with the Revolutionists after Pius IX turned reactionary, while the Roman Catholics still continued to rally to the support of the Pope. The book is interesting from the point of view of both Italian history and American psychology.—S. B. FAY.

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At some time in almost every nation, attempts are made to suppress books which do not conform to moral, theological, political, or other standards of the day. *Burned Books; Neglected Chapters in British History and Literature,* by Charles Ripley Gillett (Columbia University Press, two volumes, pp. ix, 356; 357-723), tells the story of efforts of censorship to purge England of so-called "dangerous" literature, chiefly from the time of Henry VIII to the eighteenth century. It is particularly illuminating in the discussion of seventeenth-century proscription. No thorough study of the history of a period or of a country can be made without some reference to its literature. It is by the printed word that much of the public is reached, and the history of forbidden books throws interesting light on the attempts of the ruling class to preserve an established order, well depicted in Mr. Gillett's volumes. The author has classified objectionable books into those on religion, popular liberty, and immoral subjects, and tabooed political and historical works—in short, all books which tend to lessen the power or prestige of the governing class. Persons interested in English history will find these two volumes valuable for the light they shed on the history of the political ideas of those in control of the government. They should prove no less informative to the student of history in general who seeks out the sources of public opinion.—Bessie Louise Pierce.

The Facsimile Text Society has published a reproduction of the 1558 edition of Christopher Goodman's *How Superior Powers Ought to be Obeyd of their Subjects,* with a bibliographical note by Charles H. McIlwain (Columbia University Press, pp. 238). During the first half of the sixteenth century in England, the principle of unlimited submission was almost universally accepted. The shift in opinion which helped to pave the way for the Civil War and the Glorious Revolution, as well as the expression of the doctrine of consent in classic form by Locke, began as a movement against what Knox called the "Monstrous Regiment of Women." Although only four copies of Goodman's book were known to be in existence before this reprint was made, it was, with those of Knox and Ponet, one of the earliest and most influential statements of this anti-Marian point of view.

Government by Coöperation, by Emerson D. Fite (The Macmillan Company, pp. 345), is too inclusive to be of much value. The author has been so intent upon including every known instance of coöperation that he has failed to deal effectively with any. There seems to be no excuse for the second chapter on "The Coöperative Union of the States," which is

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surprisingly commonplace and full of errors. The last chapter, on "International Coöperation," is another which might better have been omitted. The chapters on federal and state coöperation, interstate cooperation, and coöperation between government and business are little more than compilations of bureau statements and clippings from the *United States Daily* and the *New York Times*.—H. L. ELSBREE.

Social Insurance, by Percy Cohen (Columbia University Press, pp. 278), is a handbook describing the various forms of British social insurance—health insurance, widows', orphans', and old-age pensions, unemployment insurance, workmen's compensation, and industrial assurance. In each case, the outline of the existing scheme is accompanied by a brief account of its history. There is no attempt at critical analysis of the actual working of the system. The book will be found useful by those seeking detailed and reliable condensations of the statutes and orders applicable.

Principles of Social Legislation, by Mary S. Callcott (The Macmillan Company, pp. xiv, 416), is an elementary survey of legislation, chiefly American, concerning poor relief and welfare, housing and city planning, public health and recreation, education, regulation of morals, labor, and social insurance. The wide field covered makes it impossible to do more than sketch the outlines of the statutory provisions. Such compilations are perhaps worth while, but it is to be regretted that they are not more frequently followed up by thorough investigations into the administration and working of the various statutes.

Regulating an Industry, by A. H. Stockder (Columbia University Press, pp. xii, 159), is the history of the Rhenish-Westphalian Coal Syndicate, and is especially interesting at this time in view of the search for a solution of the American coal situation. The author describes the organization of the syndicate and discusses its production, marketing, labor, and price policies. The study is based on German monographs dealing with particular aspects of the cartel's policy.

The Way Forward, by Robert S. Brookings (The Macmillan Company, pp. ix, 97), discloses age more optimistic than youth. The author has combined a number of earlier articles with some new material to outline what seems to him, at eighty-two, the way of progress. His faith is in a modified capitalism, through a form of profit-sharing, rather than in Russian planning. Another major proposal is a European union, based on the plan of the United States. With these two changes, and some minor ones, the author sees world peace and prosperity not far ahead.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

COMPILED BY EARL W. CRECRAFT
University of Akron

POLITICAL PHILOSOPHY AND PSYCHOLOGY

David M. Amacker; A.B., Princeton, 1917; A.M., Oxon, 1927. The Impairment of the Theory of External Sovereignty. *Columbia.*

Norman Wood Beck; A.B., Chicago, 1923. A Group of Political Scientists as Inventors. *Chicago.*

Glenn Harrison Benton; A.B., Oberlin, 1921; A.M., *ibid.,* 1923. The Politics of Thomas Hart Benton. *Iowa.*

Philip W. Buck; A.B., Idaho, 1923. The Relations Between Political and Economic Thought. *California.*

Douglas Campbell; A.B., Oberlin, 1928. The Political Philosophy of John Dewey. *Princeton.*

Hyman E. Cohen; Ph.B., Chicago, 1928. History of the Theory of Sovereignty Since 1900. *Chicago.*

Thomas I. Cook; B.Sc., London School of Economics, 1928. Political Obligation in Recent American Thought. *Columbia.*

David Fellman; A.B., Nebraska, 1929; A.M., *ibid.,* 1930. The Economic Interpretation in American Political Theory. *Yale.*

Grace Givin; A.B., Kansas, 1914; S.D., *ibid.,* 1916. Louis DeKoven Bowen as a Political Leader. *Chicago.*

**Yung-Chi Hoe;* A.B., Beloit; A.M., Harvard, 1927. Mixed Monarchy; A Study of Political Thought from the Mid-Sixteenth to the Mid-Seventeenth Century, Chiefly in France and England. *Harvard.*

Henry Janzen; A.B., Bluffton, 1927; A.M., Ohio State, 1929. The External Aspect of Sovereignty. *Ohio State.*

James C. King; Measurable Conditions Favorable to the Development of Nationality. *Chicago.*

John D. Kingsley; A.B., Syracuse, 1929; A.M., *ibid.,* 1930. Political Concepts of Adolescent Children in the Albany Public Schools. *Syracuse.*

**Raymond D. Lawrence;* A.B., Oregon, 1925; A.M., *ibid.,* 1927. Pluralistic Sovereignty. *California.*

John D. Lewis; A.B., Oberlin, 1928; A.M., Wisconsin, 1929. A Study of Otto von Gierke and his Works. *Wisconsin.*

Marion W. Lewis; A.B., Rockford, 1928. Jane Addams; A Study in Leadership. *Chicago.*

Paul McKown; A.B., Princeton, 1920; A.M., Pennsylvania, 1928. The Political Theories of Woodrow Wilson. *Pennsylvania.*

[1] Similar lists have been printed in the REVIEW as follows: V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914); XIV, 155 (1920); XVI, 497 (1922); XIX, 171 (1925); XX, 660 (1926); XXI, 645 (1927); XXII, 736 (1928); XXIII, 795 (1929); XXIV, 799 (1930); XXV, 798 (1931).

Asterisks indicate dissertations completed during the past academic year or present summer.

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Pargat S. Muhar; A.B., California, 1925; A.M., *ibid.,* 1926. Contemporary Political Thought in India. *Harvard.*

Floyd I. Mulkey; A.B., Baker University, 1925. Political Theory of Fascism. *Chicago.*

Ralph O. Nafziger; A.B., Wisconsin, 1921; A.M., *ibid.,* 1930. The Newspapers and Public Opinion in the United States Concerning the War in Europe, 1914-1917. *Wisconsin.*

Frances Newborg; A.B., Wellesley, 1927. Political Ideas in American Fiction. *Chicago.*

Paul A. Palmer; A.B., Bowdoin, 1927; A.M., Harvard, 1928. Concepts of Public Opinion in the History of Political Thought. *Harvard.*

Michael A. Perry; B.S., Pennsylvania, 1915; A.M., *ibid.,* 1920. Relation of the Motion Picture Industry to Public Opinion. *Pennsylvania.*

Charles Gordon Post; A.B., Johns Hopkins, 1926. Political Questions. *Johns Hopkins.*

Lawrence Preuss; A.B., Michigan, 1927; A.M., *ibid.,* 1929. The Theoretical Basis of Diplomatic Immunities. *Michigan.*

Pearl Robertson; Ph.B., Chicago, 1923; A.M., *ibid.,* 1921. Grover Cleveland as a Political Leader. *Chicago.*

Helen M. Rocca; A.B., California, 1919; A.M., *ibid.,* 1921. The Political Ideas of Benjamin Disraeli. *Columbia.*

Anna Elizabeth Roth; Ph.B., Syracuse, 1909. A.M., Radcliffe, 1926. Virtual Representation. *Radcliffe.*

Kenneth A. Rouse; Ph.B., Chicago, 1928. Experimental Studies with the Psychopneumograph. *Chicago.*

Elmer E. Schattschneider; A.B., Wisconsin, 1915; A.M., Pittsburgh, 1927. The Economic Basis of the Changing Democratic Attitude toward the Tariff. *Columbia.*

James H. Sheldon; A.B., Marietta, 1927; A.M., Harvard, 1928. Factors Involved in Determining Public Attitudes toward International Policies. *Harvard.*

Charles W. Smith, Jr.; A.B., Park College, 1925; A.M., Michigan, 1928. Roger B. Taney; A Study in Political Theory and Public Law. *Wisconsin.*

August O. Spain; A.B., Texas, 1929; A.M., *ibid.,* 1931. The Political Theory of John C. Calhoun. *Yale.*

Tsao C. Wu; A.B., Kwang Hua University, 1929. Political Theories of Bertrand Russell and Norman Angell. *Johns Hopkins.*

UNITED STATES GOVERNMENT AND POLITICS AND CONSTITUTIONAL LAW

H. C. Atkiss; A.B., Antioch, 1927; A.M., Cincinnati, 1928. Coördination of National and State Agencies, with Particular Reference to the Federal Power Commission and State Public Utility Commissions. *Yale.*

H. A. Bacus; A.B., Texas Christian, 1929; A.M., *ibid.,* 1930. Judicial Interpretation of Hours of Labor Legislation. *American.*

E. E. Barlow; A.M., Illinois, 1929. The Problem of Public Information in the National Government. *Illinois.*

Russell William Barthell; A.B., Washington, 1930; A.M., *ibid.,* 1931. Attitudes of Business toward Government. *Chicago.*

H. Arnold Bennett; A.B., Wesleyan, 1919; A.M., Iowa, 1925. The Teaching of the Constitution of the United States. *Columbia.*

Hillman M. Bishop; A.B., Columbia, 1926. Constitutional Difficulties in the Way of Planned Economy. *Columbia.*

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Eleanor Bontecou; A.B., Bryn Mawr, 1913; J.D., New York University, 1917. The Rule-Making Power and Federal Legislation. *Radcliffe.*

Paul Herman Buck; A.B., Ohio State, 1921; A.M., *ibid.,* 1922. Party Divisions in the Van Buren and Tyler Administrations. *Harvard.*

Philip I. Booth; A.B., Arizona, 1930. Criminal Syndicalism Legislation in the United States. *Chicago.*

Chung-Ming Chang; A.B., Illinois, 1926; A.M., *ibid.,* 1927. The Rôle of the United States House of Representatives in Foreign Policy. *Yale.*

**Helen May Cory;* A.B., Northwestern, 1925; A.M., *ibid.,* 1927. Compulsory Arbitration of International Disputes. *Columbia.*

Willard B. Cowles; A.B., Columbia, 1928. The Treaty-Making Power of the United States as an Instrumentality in the Development of Private Law. *Columbia.*

Lawrence Cramer; A.B., Wisconsin, 1923; A.M., Columbia, 1926. Advisory Committees in Relation to Federal Administration. *Columbia.*

**Royden Dangerfield;* S.B., Brigham Young, 1925. The Senate's Influence on the Foreign Relations of the United States. *Chicago.*

Charles Edwin Davis; A.B., Texas, 1928; A.M., *ibid.,* 1929. Early Theories of the Powers and Duties of the President of the United States. *Yale.*

Harry Murray Doyle; Ph.B., Notre Dame, 1921; A.M., *ibid.,* 1922; A.B., Texas, 1923; A.M., Harvard, 1929. The United States and the Narcotic Problem. *Harvard.*

**Donald M. DuShane;* A.B., Wabash, 1927; A.M. Columbia, 1930. American Naval Policy. *Columbia.*

Brooks Emeny; A.B., Princeton, 1924. The Geographical Basis of American Foreign Policy. *Yale.*

Harold R. Enslow; A.B., Kansas, 1926; A.M., Illinois, 1927. Shall State Income Taxes be Credited Against the Federal Income Tax? *Pennsylvania.*

H. Schuyler Foster; S.B., Dartmouth, 1925. War News in Selected United States Newspapers, 1914-1918. *Chicago.*

Raymond M. Gallagher, A.B., Notre Dame, 1923. Public Personnel Management in a Period of Depression. *Chicago.*

Felipe Gamboa; A.B., Oregon, 1926; A.M., *ibid.,* 1927. The Political Policy of the United States in the Philippines. *California.*

Clifford E. Garwick; A.B., Ohio State, 1928; A.M., *ibid.,* 1929. Party Control and Presidential Initiative. *Yale.*

Max Geller; A.B., College of the City of New York, 1919; LL.B., New York University, 1920; A.M., *ibid.,* 1927. Artificial Persons Under the Constitution of the United States. *New York University.*

Charles E. Haines; A.B., Colorado; A.M., Columbia, 1927. The Supreme Court and the Anti-Trust Acts. *Harvard.*

William L. Harper; A.B., Wheaton College, 1924; A.M., New Mexico, 1927. The Constitutional Doctrines of Mr. Justice Brewer. *Columbia.*

Dayton E. Heckman; A.B., Ohio State, 1931; A.M., *ibid.,* 1931. The Social and Economic Composition of Political Parties. *Ohio State.*

**Laurence V. Howard;* A.B., Southern College, 1920. The Method of Settling International Controversies by the United States. *Chicago.*

Grace Johnson; A.B., Wells, 1919; A.M., George Washington, 1923. The Annexation of Hawaii. *American.*

Alvin W. Johnson; A.B., Berrien Springs College, 1920; A.M., Michigan, 1923. Phases of the Present Status of Church and State in America. *Minnesota.*

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Howard P. Jones; B.Litt., Columbia, 1921. Contempt of Court and the Freedom of the Press. *Columbia.*

Leo Jones; The Separation of Powers in Relation to Administrative Law and Procedure. *California* (Los Angeles).

Valdimer Orlando Key, Jr., A.B., Texas, 1929; A.M., *ibid.,* 1930. Technique and Theory of Graft in the United States. *Chicago.*

Joseph Kise; A.B., St. Olaf, 1916; A.M., Harvard, 1928. The Constitutional Doctrines of Harlan F. Stone. *Harvard.*

John Day Larkin; A.B., Berea, 1923; A.M., Chicago, 1925. The Administration of the Flexible Tariff. *Harvard.*

Joseph T. Law; A.B., Drury, 1915; A.M., Wisconsin, 1921. Constitutional Limitations on the Delegation of Legislative Power. *Wisconsin.*

**Albert Lepawsky;* Ph.B., Chicago, 1927. Courts in the Metropolitan Region of Chicago. *Chicago.*

Nelson Lisansky; A.B., Johns Hopkins, 1927. The Fourth Amendment. *Johns Hopkins.*

Harvey C. Mansfield; A.B., Cornell, 1927; A.M., *ibid.,* 1928. The Lake Cargo Controversy. *Columbia.*

Kenneth J. Martin; Ph.B., Denison University, 1927; A.M., Ohio State, 1929. Waiver of Jury Trial. *Chicago.*

Evalyn Armisted Maurer; A.B., Northwestern, 1927; A.M., *ibid.,* 1928. Governmental Regulation of the Interstate Distribution of Public Utility Products. *Northwestern.*

Vera MacLaren; A.B., Southern California, 1924; A.M., Northwestern, 1929. The Doctrine of Public Interest. *Northwestern.*

James D. McGill; A.B., Oberlin, 1920; A.M., *ibid.,* 1922. Religious Liberty and Equality in American Constitutional Law. *Cornell.*

Russell McInness; Ph.B., Brown, 1922; LL.B., New York Law School, 1925; A.M., Columbia, 1929. Administrative Control of Airplane Manufacture. *Columbia.*

Sylvia A. Miller; Ph.B., Chicago, 1910; A.M., *ibid.,* 1915; LL.B., Washington, 1920. Some Constitutional Aspects of the Eighteenth Amendment. *Washington* (Seattle).

Ralph J. Moore; A.B., Minnesota, 1929; LL.B., *ibid.,* 1928; A.M., *ibid.,* 1930. Some Judicial and Administrative Phases of Prohibition Enforcement. *Washington* (Seattle).

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**James R. Pennock;* A.B., Swarthmore, 1927; A.M., Harvard, 1928. Federal Unemployment Policy. *Harvard.*

Valdemer F. Peterson; A.B., Wayne State Teachers College, 1927; A.M., Nebraska, 1931. The Public Career of George W. Norris. *Nebraska.*

Louis Pollock; LL.B., New York Law School, 1923. The House Committee on Foreign Affairs. *Johns Hopkins.*

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M. Louise Rutherford; LL.B., Temple, 1921; A.B., Pennsylvania, 1926; A.M., *ibid.*, 1930. The Influence of the Bar Upon Legislation. *Pennsylvania.*

Leon Sachs; LL.B., University of Maryland, 1931. *Stare Decisis* and the U. S. Supreme Court. *Johns Hopkins.*

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Max A. Shepard; A.B., Ohio State, 1927; A.M., Harvard, 1928. The Development of the Idea of the Fundamental Law of the Constitution. *Harvard.*

**George A. Shipman;* A.B., Wesleyan, 1925; A.M., *ibid.*, 1926. The Constitutional Doctrines of Justice Stephen J. Field. *Cornell.*

Theodore H. Skinner, A.B., Hamilton College, 1919; A.M., Columbia, 1929. Administrative Discretion as it Affects Constitutional Rights. *New York University.*

Camden Strain; A.B., Washburn, 1925; A.M., Wisconsin, 1926. Finality of Extra-Judicial Interpretation of Constitutional Questions. *Wisconsin.*

Harold Tascher; A.B., Illinois, 1925; A.M., *ibid.*, 1926. Industrialization and the Consular Service. *Illinois.*

Cromwell H. Thomas; LL.B., University of Baltimore, 1930. Contempt of Court. *Johns Hopkins.*

Stanley Trefil; B.S., Northwestern, 1929. State Police Power in Interstate Commerce. *Northwestern.*

C. H. Tolbert; A.B., Texas, 1929; A.M., *ibid.*, 1930. Presidential Investigating Commissions. *Yale.*

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K. C. Wang; A.B., Fuh-Tan University, 1926. Impeachment in American Law and Practice. *Johns Hopkins.*

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Ruth E. Wright; A.B., Middlebury, 1923; A.M., Vermont, 1929. The Election of 1896. *American.*

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Frederic C. Ault; A.B., Ohio State, 1928; A.M., *ibid.*, 1930. Labor Legislation and Administration in Missouri. *Washington* (St. Louis).

Ervin W. Bard; Ph.B., Yale, 1925; A.M., Columbia, 1929. Port Authority of New York State. *Columbia.*

George W. Bemis; A.B., University of California at Los Angeles, 1929; A.M., California, 1931. A Study of Sectionalism and Regionalism in California Politics Since 1910. *California.*

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Oscar Buckvar; B.S.S., College of the City of New York, 1923; A.M., Columbia, 1925. Pressure Groups before the New York Board of Estimate and Apportionment. *Columbia.*

Henry G. Burke; LL.B., Maryland, 1927. The Maryland Public Service Commission. *Johns Hopkins.*

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Chu-Lin Chuang; A.B., Fukien Christian University, 1925; M.S. in Municipal Administration, Michigan, 1930. Municipal Home Rule in Michigan. *Michigan.*

Carlton F. Chute; A.B., California (Los Angeles), 1929. Public Purchasing in the Chicago Region. *Chicago.*

Winston Crouch; A.B., Pomona, 1929; A.M., Claremont, 1930. State Subsidies to Local Units in California. *California.*

**J. Murdock Dawley;* A.B., Minnesota; LL.B., *ibid.;* A.M., *ibid.,* 1930. The Power of the Governor to Appoint and Remove State and Local Officers. *Minnesota.*

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Harold M. Dorr; A.B., Michigan, 1923; A.M., *ibid.,* 1928. The Constitutional History of Michigan. *Michigan.*

Edward F. Dow; B.S., Bowdoin, 1925; A.M., Harvard, 1926. Public Utility Regulation in Maine. *Harvard.*

E. Foster Dowell; A.B., Johns Hopkins, 1929. Anti-Syndicalist Laws. *Johns Hopkins.*

Lawrence Logan Durisch; LL.B., Nebraska, 1923; A.B., *ibid.,* 1927; A.M., *ibid.,* 1928. The Nebraska Railway Commission. *Chicago.*

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Rowland A. Egger; A.B., Southwestern, 1926; A.M., Southern Methodist, 1927. The Federated Region as a Solution of the Metropolitan Problem. *Michigan.*

Clarence H. Elliott; A.B., Albion, 1925; A.M. in Municipal Administration, Michigan, 1928. The Recall in Michigan. *Michigan.*

Lavinia Engle; A.B., Antioch, 1912. County Government in Maryland. *Johns Hopkins.*

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**Theodore A. Hill;* A.B., California (Los Angeles), 1930; A.M., Stanford, 1931; State Administrative Control of Local Governments in California. *Stanford.*

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Randolph O. Huus; A.B., St. Olaf, 1916; A.M., Columbia, 1924. Municipal Playgrounds. *Syracuse.*

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Shirley E. Marsh; LL.B., Washington, 1928; A.B., *ibid.,* 1931. County Government in the State of Washington. *Washington* (Seattle).

Cecil F. Marshall; A.B., Iowa, 1929; A.M., *ibid.,* 1930. Police Administration in Davenport, Iowa. *Iowa.*

Roscoe C. Martin; A.B., Texas, 1924; A. M., *ibid.,* 1925. The Populist Movement in Texas. *Chicago.*

Charles E. Martz; A.B., Yale, 1915; A.M., *ibid.,* 1917. Ohio Politics from 1876 to 1900. *Harvard.*

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Blake E. Nicholson; LL.B., George Washington, 1923; LL.M., *ibid.,* 1925; B.S., Pennsylvania, 1926. The Collection of Local Taxes in Pennsylvania. *Pennsylvania.*

Henry C. Pepper; A.B., Missouri, 1922; A.M., *ibid.,* 1924. County Government in Colorado. *Iowa.*

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Margaret Ball; A.B., Stanford, 1931; A.M., *ibid.,* 1931. The Anschluss Movement. *Stanford.*

E. C. Bellquist; A.B., California, 1927; A.M., *ibid.,* 1928. The Development of Parliamentary Government in Sweden. *California.*

Catherine Evangeline Boyd; A.B., Radcliffe, 1926; A.M., *ibid.,* 1929. The Development of the *Ordonnance Royale* in France to the End of the 16th Century. *Radcliffe.*

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Hui-Wen Chang; A.B., Stanford, 1929; A.M., *ibid.,* 1930. The Development of the Civil Service Examination in China. *Stanford.*

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**Merle Fainsod;* A.B., Washington, 1928; A.M., *ibid.,* 1929; A.M., Harvard, 1931. The Origins of the Third International (1914-1919). *Harvard.*

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Lee S. Greene; A.B., Kansas, 1930; A.M., Wisconsin, 1932. Direct Legislation in Germany, Austria, and Danzig. *Wisconsin.*

C. Grove Haines; A.B., Ursinus College, 1927; A.M., Clark, 1928. Italian Irredentism. *Clark.*

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William C. White; A.B., Princeton, 1923; A.M., Pennsylvania, 1925. The Government of Soviet Russia. *Pennsylvania.*

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Pedro F. Abelarde; A.B., California, 1925; A.M., *ibid.*, 1930. Tariff Imperialism in the Philippines. *Columbia.*

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GOVERNMENT PUBLICATIONS

MILES O. PRICE
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AMERICAN

UNITED STATES

Congress.

House of representatives, Election of president and vice-president committee. Proposed Constitutional amendment, hearing, 72d Congress, 1st session, on S. J. Res. 14 (proposing amendment to Constitution of United States fixing commencement of terms of president and vice-president and members of Congress and fixing time of assembling of Congress). Washington: Govt. Ptg. Off., 1932. 28 p.

———. *Expenditures in executive departments committee.* To consolidate and coördinate certain governmental activities (affecting civil service of the United States), report to accompany H. R. 10794. Mar. 30, 1932. Washington: Govt. Ptg. Off., 1932. 11 p.

———. Consolidation of personnel agencies, hearings on H. R. 83389, to consolidate and coördinate certain governmental activities affecting civil service of United States, 72d Congress, 1st session. Washington: Govt. Ptg. Off., 1932. 99 p.

H. R. 83389 provides for the consolidation of civil service commission, employee's compensation commission, personnel classification board, and part of veterans' administration into an establishment to be known as the civil service administration.

———. To establish public works administration, report to accompany H. R. 11011 (to establish public works administration and transfer to and consolidate and coördinate therein all public works activities of the government). Washington: Govt. Ptg. Off., 1932. 7 p.

———. Hearings on H. R. 6665 and H. R. 6670, bills to establish public works administration and to transfer to and consolidate and coördinate therein all public works activities of the government. Washington: Govt. Ptg. Off., 1932. 227 p.

———. Department of national defense, hearings on H. R. 4472 and H. R. 7012, proposing establishment of department of national defense, to consolidate therein department of war and department of navy, and for other purposes. Washington: Govt. Ptg. Off., 1932. 282 p.

The above reports and hearings are the result of some of President Hoover's recommendations for reorganizing the government departments.

———. *Immigration and naturalization committee.* To reconcile naturalization procedure with bill of rights. Hearings, 72d Congress, 1st session, on H. R. 297, H. R. 298. Washington: Govt. Ptg. Off., 1932. 250 p.

These hearings are the result of efforts to avoid the necessity of refusing citizenship to those with religious objections or objections to bearing arms during war.

———. *Insular affairs committee.* Independence for the Philippine Islands, hearings, 72d Congress, 1st session, on H. R. 7233. Washington: Govt. Ptg. Off., 1932. 471 p.

———. Report to accompany the above. 18 p.

———. *Judiciary committee.* Defining and limiting jurisdiction of courts sitting

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in equity. Hearing, 72d Congress, 1st session, on H. R. 5315, to amend judicial code and to define and limit jurisdiction of courts sitting in equity. Washington: Govt. Ptg. Off., 1932, 68 p.

Under the above innocent title may be found a great deal of controversy, for this is the bill to limit the use of injunctions in labor disputes.

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